

# Devising Seminars: Getting to *Yesable* Options in Difficult Public Disputes

by

Carri Hulet

B.A. Political Science  
Tufts University, 2004



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Author \_\_\_\_\_

Carri Hulet

Department of Urban Studies and Planning

Date: \_\_\_\_\_

Certified by \_\_\_\_\_

Professor Lawrence Susskind

Department of Urban Studies and Planning

Thesis Supervisor

Accepted by \_\_\_\_\_

Associate Professor P. Christopher Zegras

Department of Urban Studies and Planning

Chair, MCP Committee

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## ABSTRACT

For decades, collaboration practitioners have been experimenting with different methods to address “wicked problems” – social policy issues that are impossible to define, affect multiple stakeholders, and must be addressed even though they cannot be solved. One challenge with these difficult issues is generating a range of acceptable options to choose from before decisions are made or processes stalled. This thesis explores an experimental brainstorming method called a “Devising Seminar” to encourage creative option development among influential stakeholders in a private, facilitated setting. The product of the Devising Seminar is a non-attributed summary of the ideas the group generates that is made available to an audience beyond the participants. This method expands on the original Devising Seminar concept, which was first introduced by Roger Fisher at the Program on Negotiation at Harvard Law School.

Under the direction of Professor Lawrence Susskind, I managed the Action Research project that informs this thesis. In January 2013, our team of researchers from MIT, Harvard, Universidad Austral de Chile, and the Consensus Building Institute designed and ran an experimental Devising Seminar in Santiago on hydropower conflict in Chile. Representatives from industry, government, and civil society generated a set of options that they or other actors in the conflict could take to ease or resolve their disputes.

Based on the research, I conclude that Devising Seminars have the potential to become a standard collaborative method for developing mutually-beneficial options for addressing wicked problems. I argue that stakeholders’ potential unwillingness to engage in the creative process poses the biggest challenge to the method, and recommend possible actions that could mitigate the risk. I recommend further experimentation to test the method’s effectiveness and impact.

**THESIS SUPERVISOR:** Lawrence Susskind

**TITLE:** Ford Professor of Urban and Environmental Planning

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## CHAPTER 1 – INTRODUCTION

*“Social problems are never solved. At best they are only re-solved – over and over again.” - Horst Rittel & Mel Webber, 1973*

A critical step between acknowledging conflict and resolving it is imagining, or devising, all the possible options for resolution that are worth considering. People in conflict need alternatives that are aspirational, but realistic, and grounded in the interests of those who will have to live with the agreement that is reached. When there is high conflict or when the issues are public in nature and there are many parties involved, it is often very difficult to get good ideas on the table, let alone make a decision.

In an ideal world, all problem-solving would involve creative brainstorming and thoughtful examination of a full range of possible solutions before decisions are made. But this kind of careful, inventive “ideation” is hard to achieve under the best of circumstances. Too often, when conflict overshadows the process, the options include little more than a combined list of demands that were worked out independently by the different stakeholders. Decision-making then becomes a game of power brokering or concession trading and the opportunity to find mutually beneficial solutions is lost. When a conflict is in dire need of imaginative, but workable, options and the status quo is unlikely to produce them, could a forum dedicated to creative brainstorming with influential people involved in the crisis prove the difference between prolonged conflict and resolution?

This thesis examines just such a concept, under the name “Devising Seminar.” This phrase was likely invented by the late Roger Fisher who applied it to a specific type of brainstorming activity at the Program on Negotiation at Harvard Law School (PON) in the late 1970s and 1980s. Here I provide some historical context for the original concept, review collaborative problem-solving theory to support a broadened definition, and present a case study to illustrate the practical application of this broader definition to a current conflict over hydropower development in Chile. I also speculate on a range of ways Devising Seminars could be used to ease entrenched conflicts and illuminate the path forward to much-needed resolution.

### Research Overview

The Devising Seminar framework I research in this thesis includes five key elements.<sup>1</sup>

- 1) The **purpose** of the Devising Seminar is to invent potential options to address difficult conflicts
- 2) The **participants** are influential stakeholders
- 3) The process is managed by a **neutral facilitator**
- 4) The process takes place in a **private setting**
- 5) The outcome of the Devising Seminar is a **summary of the options** the group generates

I approached my research with the hypothesis that Devising Seminars are an effective collaborative forum for generating viable options to resolve difficult public disputes. I started

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<sup>1</sup> These five elements were formulated by Professor Lawrence Susskind. They closely mirror the basic construct of *Parallel Informal Negotiation*, as discussed in Chapter 2



with two questions: First, if Devising Seminars *are* effective, what might they contribute to the practice of collaborative problem-solving? Second, how does one plan, prepare for, and run a Devising Seminar?

## Methods

I approached this investigation primarily as an Action Research project<sup>2</sup> by applying current theory and practice in multi-stakeholder dialogue and the Mutual Gains Approach to negotiation (MGA) to an experimental Devising Seminar in Chile in January 2013. I organized this event with a research team comprised of students and graduates from MIT, Harvard, and Universidad Austral de Chile (UACH), along with facilitators from the Consensus Building Institute. I was the project manager and liaison between the US and Chile-based teams, under the direction of Professors Lawrence Susskind of MIT and Teodoro Kausel of UACH.

My research and conclusions are also informed by the existing literature on communicative and collaborative planning theory and negotiation theory, interviews with experienced dialogue practitioners and academics, surveys from the Chile Devising Seminar participants, and my personal experience as a professional mediator. I also draw on what we know about Fisher's original Devising Seminars.

## Why This Matters

The kinds of problems we face as humanity are becoming increasingly complex, and the solutions of the past are inadequate. This is not a statement of blind exceptionalism, but a grim recognition of the fact that globalization has transformed the world into a place where local issues are often affected by factors and actors far removed from local control. Decisions made in one place and in one regime can significantly impact communities on the other side of the planet. Ours is a world where indigenous communities in Chile can build coalitions with non-governmental organizations (NGOs) in Canada and attorneys in Washington D.C. to fight a Norwegian-led hydropower company and their own central government. (Aponte 2012) We live at a time when people in tiny Filipino coastal towns are directly impacted by national energy policy decisions in the United States. Today the purchasing decisions of one retailer can lead to major gains in economic prosperity and significant human suffering.

This interconnectedness – not just between nations, but between any overlapping spheres that disregard political boundaries – creates “conflicts in which many governmental and non-governmental actors have legitimate interests, and where there is not one overriding public interest or decision rule sufficient to resolve the conflict to the satisfaction of all stakeholders.” (Fairman 2005) These disputes may be highly technical, influenced by political power or histories of conflict, or have significant uncertainty. In short, they are “wicked problems” – the kind that, in 1973, Horst Rittel and Mel Webber said are nearly impossible to define and characterized by an “equally intractable...problem of identifying the actions that might narrow

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<sup>2</sup> Action Research is an approach to building knowledge while attempting to make a difference in the world. Action research blurs the lines between researchers and subjects, in recognition that all participants in a participatory research project learn from each other, and from the results of joint intervention. (Reason and Bradbury 2007)

the gap between what-is and what-ought-to-be.” (Rittel and Webber 1972) Wicked problems do not have right answers, and yet, they are the problems for which we most desperately need to devise better options.

## CHAPTER 2 – Problem-Solving through Collaboration and Negotiation

*“Knowledge and value do not merely have objective existence in the external world, to be ‘discovered’ by scientific inquiry. They are, rather, actively constituted through social, interactive processes. Public policy, and hence planning, are thus social processes through with ways of thinking, ways of valuing and ways of acting are actively constructed by participants.”*

- Patsy Healey, 2006

There may be as many approaches to solving difficult public problems as there are problems to be solved. Every discipline offers its prescription using the lens through which it sees the issues. Economists may focus on incentive structures, engineers on efficiencies, and physical scientists on the unavoidable cause and effect of natural laws. These and other approaches have and will continue to provide useful ideas for resolving, or at least easing difficult public issues. Where do Devising Seminars fit in? What can we expect this particular collaborative method to contribute to the social policy puzzle? Why should we expect a Devising Seminar to produce more promising results than any other method?

To answer these questions, we must first consider two areas of theory that support collaborative processes in general – communicative theory and interest-based negotiation theory. Devising Seminars are a collaborative process, based in communicative and negotiation theory. Both trace their roots to a movement in planning that started in the early 1970s. Over the past forty years, many practitioners and theorists in the realm of social policy have come to view problem-solving through the lens of communicative theory and collaborative social learning. (Healey 2006) In 1973, Rittel and Webber were among a set of progressive thinkers at the forefront of this movement, calling for the planning profession to outgrow its roots in the sciences, where “tame” problems could be solved through proper application of technical tools with enough trial and error. (Rittel and Webber 1972) They, along with like-minded colleagues, began to name the reasons why technical approaches to social policy fall short, namely the diversity of values in the polity and the fact that rationality is not an absolute, but rather the product of socialization. To frame the theoretical explication that follows, I include first a summary of Rittel and Webber’s formulation of wicked problems. Their rubric captures various characteristics of social problems that make them challenging to resolve.

**Table 1 – Characteristics of Wicked Problems**

<b>Hard to define</b>	<ul style="list-style-type: none"> <li>Understanding the problem depends upon one's idea for solving it</li> <li>Problem definition emerges through dialogue, critique, and judgment</li> </ul>
<b>No stopping rule</b>	<ul style="list-style-type: none"> <li>Wicked problems are never solved</li> </ul>
<b>Solutions are good-bad, not true-false</b>	<ul style="list-style-type: none"> <li>No objective criteria to establish how “right” a solution is</li> <li>Parties judge the solutions with their values</li> </ul>
<b>No immediate or ultimate test of a solution</b>	<ul style="list-style-type: none"> <li>Ripple effects make it impossible to fully judge a solution now or in the future</li> </ul>
<b>No opportunity to learn by trial and error</b>	<ul style="list-style-type: none"> <li>Every implemented solution has (potentially irreversible) consequences on the subject, and usually on the system</li> <li>The consequences of the solution may be new wicked problems</li> </ul>



<b>No way to know when all potential solutions have been considered</b>	<ul style="list-style-type: none"> <li>• There is no guide that states all the ways in which a social policy problem might be solved</li> <li>• The set of realistic plans of action rely entirely on judgment, trust between parties, and the capability available to carry them out</li> </ul>
<b>Every problem is unique</b>	<ul style="list-style-type: none"> <li>• Any two social issues that appear to be very alike probably have more differences than similarities (or the differences are more material)</li> </ul>
<b>Symptoms of other problems (systemic)</b>	<ul style="list-style-type: none"> <li>• Trying to identify cause and effect requires selecting a unity of analysis, but the problem at that level can almost always be seen as a symptom of a problem at higher level of abstraction</li> </ul>
<b>Explanations of problems framed by worldview</b>	<ul style="list-style-type: none"> <li>• As there is no definitive problem definition, various equally legitimate explanations may emerge</li> <li>• Explanations are framed by attitudinal criteria</li> </ul>
<b>Experiments can be harmful</b>	<ul style="list-style-type: none"> <li>• There is no lab for solving wicked problems</li> </ul>

*Adapted from Rittel and Webber, 1973*

## Communicative Theory and Collaboration

Communicative theory is this generation's attempt to reconcile individual interests with collective action. Jürgen Habermas, with his 1984 book *Theory of Communicative Action*, and Anthony Giddens with *The Constitution of Society*, published the same year, are the two foundational thinkers in communicativist theory.

Habermas' key argument is that rationality is not static or intrinsic, but influenced by our social interactions in general, and our communications in particular. Habermas suggests people create "ways of knowing," together, through dialogue and debate. He rejects the notion that the whole of society can be understood as the sum of many individuals, pursuing their natural desires and needs. Instead he insists that consciousness and rationality are formed by social interactions. (Habermas 1984)

Giddens applies a similar logic to his theory of *structuration*, but rather than focusing on the mind of the individual, his unit of analysis is primarily the structures in which we live. Giddens argues that our social existence exerts power over the rules we impose on ourselves and the way we choose to use or distribute our material resources. All of the systems we take for granted, he says, were at one time created by groups of people who developed those structures or systems under the influence of social pressures. We are not subject to an external context. We manufacture it. (Giddens 1984)

These theorists assert that because individual rationality and societal structures are shaped by communicative interactions – particularly dialogue and debate – public decision-making is and should be social. Among the theories that build on this claim are argumentative, communicative, or interpretive planning theory. (Healey 2006) Healy notes that several common threads tie these theories together:

- All knowledge is socially constructed; thus science and other technical expertise are not as different from 'practical reasoning' as has been claimed
- Individuals do not arrive at their 'preferences' independently, but realize their views through social interaction



- Public policies that seek to be efficient, effective, and accountable need to draw upon the range of knowledge and reasoning among stakeholders
- The dynamic of social learning leads policymaking away from competitive bargaining and toward collaborative consensus-building
- Consensus-building activities have the capacity to endure, to coordinate actions by different agents, and to transform ways of knowing and thereby build cultures
- Communicative action is both embedded in its context of social relations and has a capacity to challenge and change these relations. (Healey 2006)

In practice, these theories are made manifest in public engagement efforts of various types. This thesis is concerned primarily with the umbrella field of negotiation and consensus-building in public disputes, which has provided empirical evidence of the social change theories put forward, by Habermas and Giddens. Devising Seminars belong in the negotiation category and are not so different from other communicative processes that their potential to affect the participants' knowledge and perceptions is greatly in doubt. What remains to be seen is whether Devising Seminars are effective at the particular type of rational impact for which they are designed – to promote creativity, joint problem-solving, and relationship-building. For further insight into this objective, we look to negotiation theory and its practical application through the Mutual Gains Approach (MGA).

### Dispute Systems and Negotiation Theory

Wicked problems do not exist in isolation, but rather in a context of formal or informal dispute-handling systems. These systems handle flows of disputes and are institutionalized, meaning they are defined and maintained formally by law or regulation, or informally by culture or custom. They also tend to have the support of powerful influences that benefit from the way these systems are designed. (Ury, Brett, and Goldberg 1993)

Dispute systems may also be evidence of Giddens' theory of *structuration*. Every system for handling disputes is socially constructed, even if the design is unintentional. In order to work through any system to resolve or ease entrenched disputes, it's helpful to recognize the component parts of the system and attempt to understand the rationale that led to the system's particular characteristics.

Broadly speaking, there are four ways to handle disputes: force, legal action, negotiation, or avoidance. Force, through violence or the threat of violence, seeks to overpower, silence, or eliminate an opponent. Political or hierarchical force may do the same without the use of physical harm or threat, but ultimately force is about imposing one person or one group's will on others. In contrast, legal actions aim to settle disputes based on rights, rules, and laws. Negotiation seeks to reconcile the wills of more than one party in a way that is satisfactory enough to all the affected parties. Sometimes, conflict is resolved by the parties taking no action at all. (Ury, Brett, and Goldberg 1993)

Force, litigation, negotiation, and avoidance do not inhabit independent spheres. Resolution approaches overlap, and any dispute-handling system may have elements of each. However, using this range of categories allows us to pinpoint Devising Seminars under the umbrella of negotiation.

The simplest definition of negotiation is decision-making that involves more than one party. A traditional approach to negotiation is to rely on the principle of persuasion where the underlying strategy is to change the will of the other party in order to reach an agreement. (Lewicki, Saunders, and Barry 2009) The alternative approach is to understand and seek to address the parties' interests – the reasons underlying their expressed positions – in order to discover or invent pathways forward that allow these interests to be met simultaneously. (Fisher, Ury, and Patton 2011; Cruikshank and Susskind 1989; Bazerman 1994)

### *Mutual Gains*

One style of interest-based negotiation is the Mutual Gains Approach, which outlines four broad steps to gaining agreements that are fair, efficient, stable, and wise. (Cruikshank and Susskind 1989) The steps involved are: prepare, create value, distribute value, and follow through.

**Table 2 – The Mutual Gains Approach to Negotiation**

PREPARE	CREATE VALUE	DISTRIBUTE VALUE	FOLLOW-THROUGH
Clarify your mandate and define your team	Suspend criticism	Behave in ways that build trust	Design nearly self-enforcing agreements
Estimate Best Alternative to Negotiated Agreements (BATNA) – yours and theirs	Invent without committing	Identify standards or criteria for dividing value that all sides can support	Specify mechanism to deal with “predictable surprises”
Know your own interests and think about their interests	Generate options that exploit differences	Keep at least two packages in play	Agree on monitoring arrangements, including metrics
Improve your BATNA (if possible)	Bundle options into multiple packages	Use neutrals to suggest possible distributions	Keep working to improve relationships
Prepare to suggest mutually beneficial options			

The Mutual Gains Approach is designed to lead parties to agreement in a way that enhances relationships among them. (Susskind, McKernan, and Thomas-Larmer 1999) The suggested moves encourage fair play and rely on the parties' efforts to hear and understand one another's interests in order to craft mutually agreeable proposals. These interactions seek to maintain rather than trade on relationships between parties, which is a key determinant of the propensity to collaborate in the future.

Since Devising Seminars aspire to generate a suite of workable alternatives to resolve a conflict while building relationships among stakeholders, their structure is built primarily around the first two steps of the Mutual Gains approach – preparation and creating value.

### *Preparation*

Bringing people together to talk about a high-conflict situation without appropriate preparation carries significant risk. At best, the activity could be a waste of time. At worst, it could backfire



by creating a forum for people who are in conflict to launch personal attacks or otherwise deepen the divide between them.

The Mutual Gains approach suggests a method for preparation that brings the actors into a problem-solving frame of mind as early as possible. The approach proposes that all parties spend time preparing for negotiation by understanding their own interests and alternatives while seeking to understand the same for the other side, and then using that information to imagine “mutually-beneficial options” they might propose at the table.

The apparent simplicity of this guidance is misleading. First, understanding one’s own interests is not always straightforward. Usually, a negotiator in a process represents a constituency of some kind, whether she is the head of a company or community, an elected or appointed official, or a proxy for interests that cannot speak for themselves such as the environment, children, or future generations. Presumably, stakeholder groups have at least one tie that binds them together, but otherwise they may be quite diverse and lack consensus on their own interests and values. A negotiator’s first job is to get her own house in order by trying to understand and reconcile the range of views that exist within her group before seeking to represent the group in a negotiation with others. Even individuals can be “of two minds” about a difficult decision, so clarifying one’s own interests can be a difficult and time-consuming process.

The companion task – seeking to understand the other parties’ interests – is also challenging, but can and should start before parties meet to exchange information. Wise negotiators learn as much as they can about what their counterparts seem to need or want so they can begin to think creatively about solutions that would meet the legitimate interests of all sides. Negotiators must take care, however, not to rely too much on any information they gather before they have the chance to check their assumptions with the parties themselves. Here the skill to discern between what parties say they want (their *positions*) and their underlying interests is critical. (Fisher, Ury, and Patton 2011) The better a negotiator understands and can operationalize this concept, the more she will be able to devise creative solutions with real potential.

### *Creating Value*

In 1983, Roger Fisher wrote, “The more complex the problem, the more influential an elegant answer.” At the time Fisher was writing about different sources of “negotiating power,” or the ability to influence others in a collaborative decision-making process. Predictably, most of the sources of power he cites are cultivated over a lifetime of positioning or behaviors, such as skills and knowledge, relationships, and having a good alternative or “walk-away” option. But the power derived from proposing a solution that meets all or most of the interests of the parties is available to anyone who is willing to listen and be creative, regardless of their status coming into the room. Elegant solutions are most likely to be achieved in an environment dedicated to “creating value” before making decisions. To create value means to enhance, magnify, or multiply the options through brainstorming.

In a negotiation context, brainstorming is not a haphazard process. It has rules and structure that invite creativity by forestalling judgment, but also guide the process in a practical,

problem-solving direction. To encourage effective brainstorming the participants must feel comfortable putting forward ideas. They won't speak if they fear being ridiculed or judged, or if they believe they will be bound to support every idea they suggest. Participants must "suspend criticism" and be willing to "invent without committing." Again, what sounds simple in theory is difficult in application because away from the negotiating table, the same people live in complicated social webs where other rules of engagement predominate. It takes discipline for a group in conflict to be committed to an open process of brainstorming that rejects judgment and allows ideas to stand independent from the people who express them. Having a good mediator to guide the process can help parties rise to these expectations.

Without suggesting too linear a process, it is helpful to imagine that suspending criticism and inventing without committing produce a hodgepodge of ideas that need to be organized or "packaged" into viable options. In order to do that, participants have to start talking about give and take, or "generating options that exploit differences." As parties trade across issues (i.e. I could give you X, if you could promise to take action Y), the options emerge as distinct packages with different combinations of the same component parts. This is where having a solid grasp of all parties' core interests becomes necessary because parties tend to value the pieces of the package differently. One party wants certain assurances; another wants specific actions to be taken, while yet another cares most about resource commitments. This packaging, or organizing process, "exploits" these differences and is carried out in a non-committal manner as the beginning stages of brainstorming. No one is bound to anything because the purpose of developing multiple packages is to create a range of probable options rather than a single, "best" alternative. Crafting a final solution requires additional negotiation but is intentionally left out of the structure of a Devising Seminar for reasons that will be more fully developed in Chapter 3.

### **Parallel Informal Negotiation (PIN) as a Comparison**

In any dispute-handling system, writes David Fairman, "there is likely to be both a formal, institutionalized method for decision-making (e.g., agency adjudication, interagency committee agreement, parliamentary legislation) and a range of formal and informal opportunities for stakeholders to influence the ultimate decision-makers. What we call "public conflict resolution" is a way to supplement formal decision-making and informal influence with a structured, voluntary process of dialogue and agreement seeking among interested stakeholders." (Fairman 2005)

Parallel Informal Negotiation (PIN) is a term created by Lawrence Susskind and Janet Martinez in the late 1990s to describe unofficial processes that complement formal negotiations in international diplomacy. These processes are distinguished by five factors that closely resemble the five key elements of the Devising Seminar. First, the participants in PINs are actual negotiating officials, not their emissaries. Second, the process is not public. Third, the process is informal but runs alongside and is affiliated with a formal negotiation. Fourth, it is facilitated by a neutral third party. Fifth, while the ideas, concerns, and issues raised by the participants in the process are captured and articulated in writing, they are not attributed to the individuals who voiced them. (J. Martinez and Susskind 2000)



Between 1994 and 1996, Susskind and Martinez ran three experimental PINs to complement a host of international talks on trade and the environment, including the climate change debates that led to Kyoto in 1997 and Buenos Aires in 1998. These PINs addressed a perceived need for a space in which some of the negotiators involved in these complex, controversial issues could step out of the public spotlight to attempt to work out their differences with help from a professional mediation team.

In all three cases, Martinez and Susskind interviewed many of the participants in advance of the workshops and wrote a problem-framing pre-discussion paper that synthesized what they heard. This paper was sent to all the participants in advance so they could arrive at the workshops with some understanding of the range of views expressed by their colleagues. The discussions throughout the workshops were then carefully structured around the key concerns the participants had raised in the interviews, and the brainstorming time was dedicated to developing proposals that met these concerns. The goal of developing proposals was to provide the negotiators with something concrete they could later suggest in formal negotiations. From each of the workshops, the mediation team produced a summary document capturing the proposals and then sent them to the broader set of negotiators involved in the formal talks. (J. Martinez and Susskind 2000)

Susskind affirms that many of the international agreements on climate change and trade and the environment that were established in the late 1990s (including the Kyoto Protocol) contained versions of the proposals developed during these PINs. (Susskind 2013) In an interview, Martinez also described the workshops as transformative for the participants. She said she and the other organizers built in a lot of “coffee and walking time,” or open space in the agenda, so that participants could connect and build relationships with one another. She said, “In the evaluation at the end of the workshops, we asked people what they liked and learned. The most consistent thing we heard was, ‘I came in thinking the environmentalists were crazy, but I learned they’re really not,’ or, ‘I learned these are real people who are well-meaning.’ To learn to respect the other people in the room is pretty remarkable, and fundamental.” (Janet Martinez 2013) Through a non-public, informal process, participants came to empathize with one another, which arguably influenced the ideas they generated, and ultimately affected the formal negotiation agreements.

### **Applying Collaborative Theory and Practice to the Research Questions**

Communicative theory claims that each individual’s knowledge and perceptions, as well as the structures in which we make decisions are socially constructed. Because of this, public decision-making should be communicative and interactive in deliberate ways that lead to collective learning. Instead, social interactions often lead to conflict because societal systems tend to reveal differences better than display common ground. Deliberative practitioners recognize these failings as part of dispute systems that can be upset by intentional negotiation strategies designed to build mutually-agreeable options. Parallel Informal Negotiations provide a model for the option-building aspects of Devising Seminars, and demonstrate the value that a brainstorming process with key stakeholders can produce.

## CHAPTER 3 – Devising Seminars: Getting to *Yesables*

*“Faced with any conflict situation, [Fisher] would reframe the question as: ‘Who can do what tomorrow morning to move this situation forward to resolution?’  
This was the governing question of the Devising Seminar.”*

- Bill Ury, *The Five Ps of Persuasion: Roger Fisher’s Approach to Influence*

The phrase “getting to yes” implies both a process and a decision point. The “getting” part suggests movement from uncertainty to something worth considering – something that may still be rejected, but is a decent possibility. “Getting” to yes infers that there are some pre-decision goals or benchmarks that must be reached first. Before you can say yes, it’s important to create some *yesable* options.

### Origin of the Devising Seminar

The challenge of finding that next *yesable* move seems to have been Roger Fisher’s inspiration to host meetings he called Devising Seminars in the late 1970s. He engaged Harvard faculty and influential people involved in difficult international conflicts. These meetings were brainstorming sessions, often held over dinner, in which Fisher would ask the participants to imagine moves or actions that anyone involved in a given conflict could do “tomorrow morning” to help ease tensions or open up new opportunities for resolution. Fisher asked Bill Ury, a graduate student at the time, to help organize these meetings and to take notes. After the meeting Ury and Fisher would take what they heard and write up a “memo of advice” which they then sent to a person with influence in the situation. (Ury 2013a)

It does not appear from the literature or from conversations with individuals involved in Fisher’s Devising Seminars that he ever attempted to codify the activity. (Ury 2013b; Susskind 2013; Moomaw 2013) It seems that over the 30 years since Fisher first started using the term, The Program on Negotiation (PON) has infrequently hosted meetings under the name “Devising Seminar” that vary on Fisher’s theme without fully defining the term.

In fact, very little is written about any of these Devising Seminars at PON because they are confidential and the outcomes were shared with a very small, elite audience. Nevertheless, it appears that some of these meetings have had quite a significant impact on the people involved as well as the conflicts examined. Bill Ury writes that a Devising Seminar was responsible for introducing the “one-text procedure” to Secretary of State Cyrus Vance in 1978, just ahead of the Camp David summit where President Jimmy Carter met with Egypt’s President Anwar Sadat and Prime Minister Menachem Begin of Israel. Ury describes the experience:

At a Devising Seminar dinner, Roger challenged us to come up with ideas for an effective negotiating process for the summit. Professor Louis Sohn, who had been involved for years in negotiating the Law of the Sea, described the single negotiating text approach that had been used to reach agreement among one hundred fifty or so nations. Instead of starting from each side’s obdurate positions, the process would begin from an informal third party draft proposal that would be subjected to continuous criticism and revision until it came as close as possible to satisfying the essential interests of each party. At the dinner we discussed how this single-text approach could apply to the Egyptian–Israeli peace talks and wrote up the idea for Secretary Vance. Vance then



made good use of this method to help President Carter secure the historic Camp David Accords between Israel and Egypt. (Ury 2013a)

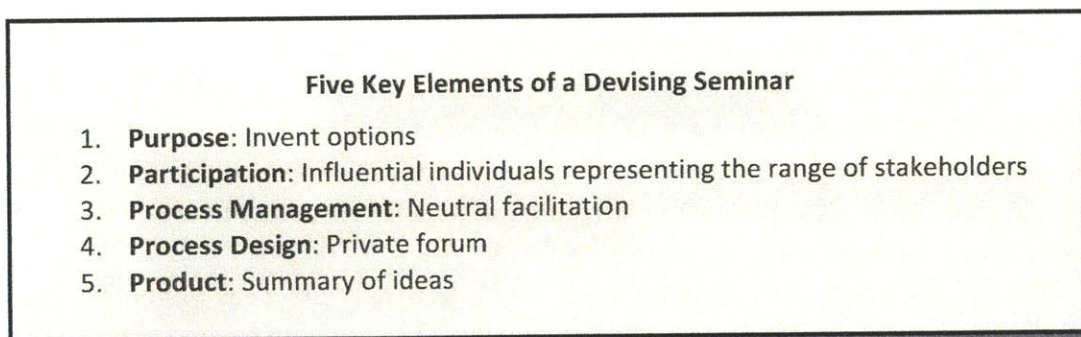
Ury cites this case as an example of a Devising Seminar that sought to define a better *process* for building consensus rather than achieving a better agreement in and of itself. This fit perfectly within Fisher's stated goal of identifying moves that someone could take the following morning to help resolve a conflict.

Susskind, who has been involved in a number of Devising Seminars at PON, says that guests in Devising Seminars have reported that the meetings "(1) helped them take the views of the 'other side' more seriously; (2) generated options that were subsequently folded into what became final agreements; and (3) helped [them] think more clearly about their own interests and their own commitments." (Susskind 2012)

### Formalizing the Process

The framework proposed below builds on Fisher's initial concept, but replaces the academic or "expert" panel with actual stakeholders and broadens the scope of the summary document. The changes are commensurate with communicative theory by bringing in the stakeholders as the thinkers or "devisers" and expanding the reach of the results. The Five Key Elements are also defined loosely in order to give shape and strength to the process, while allowing for flexibility in its application.

**Figure 1 – Five Key Elements of a Devising Seminar**



#### *Purpose – Generate Mutually-Beneficial Options*

Developing options is a complicated task. Participants in a Devising Seminar bring more to the table than their expertise and creativity. They also bring their biases, their poor relationships, and any negative interactions they might have had with the other participants in the seminar or the organizations they represent. Participants carry a deep sense of their responsibilities and roles away from the table. None of this context disappears when they step into the room, so it cannot be taken for granted that they will immediately engage in creative problem-solving simply because they are willing to come to the seminar. From the initial preparation to the final structure of the agenda, the meeting must be designed with the intent to create a space in

which the participants feel enabled to be part-time problem-solvers rather than full-time proponents of a particular viewpoint.

The first obstacle to overcome is the stakeholders' need to dissect the past. It is very difficult to move forward when a conflict is the result of previous wrongs—especially if there is disagreement about “how we got here.” If participants do not have the opportunity to express their concerns about the past, they will not be able to think clearly about the future. For this reason, Devising Seminars should include a rigorous assessment phase before the parties come together face-to-face. An assessment might include various activities, from a literature or media review to consultations with experts to personal interviews with the participants or like-minded individuals.

Some of the questions the assessment may seek to answer are: “Who is most affected or involved in this dispute?” “What are the main causes of the conflict?” “What does each stakeholder group care about the most?” “What are the relevant laws, regulations, or other institutional constraints that shape this conflict?”

The questions will be different for every seminar, as will the method of carrying out the assessment, but the objective should be to capture the range of views that the participants in the room, as well as the broader set of parties in the dispute, would want considered in any problem-solving discussion. The assessment should be shared with the participants before they attend the seminar and must be written in an accessible format and length so they are likely to read it before they arrive. A quality assessment frames the conflict authentically so all sides feel represented. If the assessment has done its job, the participants will enter the room with less anxiety to voice their points of view about the past, and more openness to the possibility of discussing the future.

The next task is to set the agenda or structure of the meeting itself so it will lead to brainstorming. A wide variety of meeting design questions should be considered in light of the insight gained through the assessment. How much time does this group need? Should they meet once or for a series of meetings? Which deliberative or brainstorming techniques are most likely to bring out good ideas? How much of this structure can you plan ahead and how can you prepare to improvise in the moment, when necessary?

The fact that participants are being asked, explicitly, to put forth ideas without having to commit to them introduces powerful possibilities. The risk, of course, is that some of the ideas will be unrealistic because they are not bound by the limitations of obligation. On the other hand, the lack of commitment allows participants to imagine prospects they cannot consider otherwise, and which might be made possible through creative collaboration. The facilitator might probe beyond the limitations the group is accustomed to discussing with questions such as, “What if you could change the law tomorrow?” Or, “Assuming you could find the money to implement your best idea, how would you go about it?”

To encourage brainstorming, it should be made clear that any suggestion for action is acceptable, from simple acts of reconciliation between two disputants, to changes in national policy. The facilitator might help the participants think in terms of “categories” of potential actions such as regulatory, technical, communication, or resources. The proposals could be relevant at different scales, such as local, regional, or national. The objective is to help the



participants attack the problem from different angles by placing them in a space of inquiry that deliberately looks at the issue from new points of view.

The advantage of having different viewpoints represented in the room is to check assumptions or “try out” ideas that can only be evaluated by someone on the “other side.” In the context of a Devising Seminar, it is perfectly acceptable to ask someone else at the table, “What if we were willing to do X? How would your people respond?” The party asking the question is not actually offering to do anything, nor is the responding party. But they are gathering information about each other’s willingness to experiment, thereby gaining insight into the boundaries within which they might overlap or have room to maneuver.

Whatever the structure of the seminar, the participants should experience the progression described by the Mutual Gains Approach (see Figure 2). If implemented correctly, the assessment and other preparations should draw attention to interests rather than positions. The dialogue should be free from judgment and criticism. The conversation should move productively from generating a smattering of ideas to organizing or packaging them into workable options.

### *Participation – Influential Stakeholders*

Three of the five key elements proposed in this paper line up with Fisher’s original vision of a Devising Seminar. On the question of who participates, my proposed framework departs significantly. While Fisher’s meetings were often informed by actual disputants (or diplomats or others who were directly involved in the conflicts), the “devisers” or idea-generators in Fisher’s seminars were mostly academics. (Susskind 2012; Ury 2013a) This dichotomy is somewhat disingenuous as some of the academics involved in these meetings were also significant players in advisory or other capacities outside the room, but there is nothing to suggest that Roger Fisher ever intended for Devising Seminars to bring stakeholders in a dispute together, face-to-face, to brainstorm solutions. Instead, his model relied on the expertise of people who were excellent thinkers on the issues, but not necessarily as personally invested in the outcomes, or uniquely positioned to carry them out.<sup>3</sup>

Why should the stakeholder participants be influential? The argument is two-fold. First, the purpose of a Devising Seminar is to develop proposals for actions that real people in the world could take to move the needle toward resolution in a difficult situation. If some of the most influential individuals in their respective spheres can imagine new ways of interacting together, the hope is that they will.

Second, better relationships develop between people when they problem-solve than when they argue or fight over their differences. Influential people in a dispute may often come into contact with each other, but those interactions are likely adversarial and do more to damage relationships than build them. The private, facilitated, non-committal, outcome-

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<sup>3</sup> In this thesis, I argue in favor of bringing stakeholders face-to-face, but I do not intend to exclude Fisher’s original model from the practice of holding Devising Seminars. I assume that a practitioner might decide, after performing an assessment, that a Fisher-style Devising Seminar would be most helpful in a particular situation, but I have not explored the benefits or disadvantages of the “expert panel” or suggested criteria to guide that decision. More research would be necessary.

oriented nature of Devising Seminars encourages power holders to step into a different kind of space where there is a chance for healing and an opportunity to sow the seeds of future collaboration.

An example of the rationale behind bringing together influential stakeholders is illustrated by the PIN climate change negotiations cited previously. In those processes, most of the participants in the workshops were actual negotiators in the ongoing global climate negotiations at the time. Their knowledge of the science and politics around climate change influenced the ideas generated at the PIN workshops; then later, when they were formally engaged in official negotiations at Kyoto, they were able to introduce and argue for some of the best ideas the group generated at the workshop. (Susskind 2013)

In this context, it is important to distinguish *influential* from *accountable*. Devising Seminars are explicitly *not* decision-making processes, and they need not be held to the same standards of representation or legitimacy (not to mention transparency) that a decision-making process would. The Seminar benefits from a set of participants who are as representative as possible, but if for one reason or another it is not possible to engage the full range of stakeholders, the outcome can still be valuable. Also, because Devising Seminars are not bound by the same demands for legitimate representation as decision-making processes, the door is open to process design possibilities that would be untenable if the participants were expected to make commitments on behalf of constituencies. One might ask an influential artist or entertainer, for example, to be part of the brainstorming process, even though she or he has no direct stake in the outcome. It is possible that someone with a particular technical expertise would be unwilling to participate in a formal, public process for her own legitimate reasons, but would be willing to help devise solutions in a more private setting. Other innovations or experimentation in terms of participation could be possible in a Devising Seminar.

#### *Process Management – Professional Neutral Facilitation*

In a Devising Seminar, skilled facilitation by a “professional neutral” is critical. A professional neutral is a person who is trained to be impartial on the substance of the issues under discussion, but ardently committed to helping the parties move through a productive process and achieve their own goals. The neutral may be called a mediator or facilitator, depending on the group’s preference or how contentious the parties’ interactions may be. In the context of a Devising Seminar, the facilitator devotes her training and background to creating the space in which the parties can think creatively and build relationships with each other. The neutral should be knowledgeable about the topics being discussed, and will almost surely have personal opinions on the issues, but she must remain neutral on the substance of the issues throughout the preparation, execution, and follow-up of the Seminar in order to build trust and to ensure that the participants feel ownership of the meeting’s outcomes. Facilitators also help participants navigate through the dialogue, which can otherwise become what Odette van de Riet calls a string of “superfluous knowledge and negotiated nonsense.” (Riet 2007)

Most importantly, skilled neutrals know how to help individuals within the group work well together. They watch for body language and other non-verbal cues that indicate what a particular participant is not saying. They listen for overlapping interests that may be hidden



between the lines of their public statements. Roger Fisher has said that if parties act defensively to protect their positions or struggle to get into a problem-solving mode, “The power of a mediator often comes from working out an ingenious solution that reconciles reasonably well the legitimate interests of [all] sides.” (Fisher 1983) The professional neutral, thus, must know when and how to interject in a substantive discussion, and when to simply guide the flow of the idea-generating process.

Facilitators may use a variety of tools or techniques to encourage brainstorming. For example, Ury writes that in the Devising Seminars Fisher facilitated, he often used a specific problem-solving rubric that Ury and Fisher developed together and later published as The Circle Chart in *Getting to Yes*.

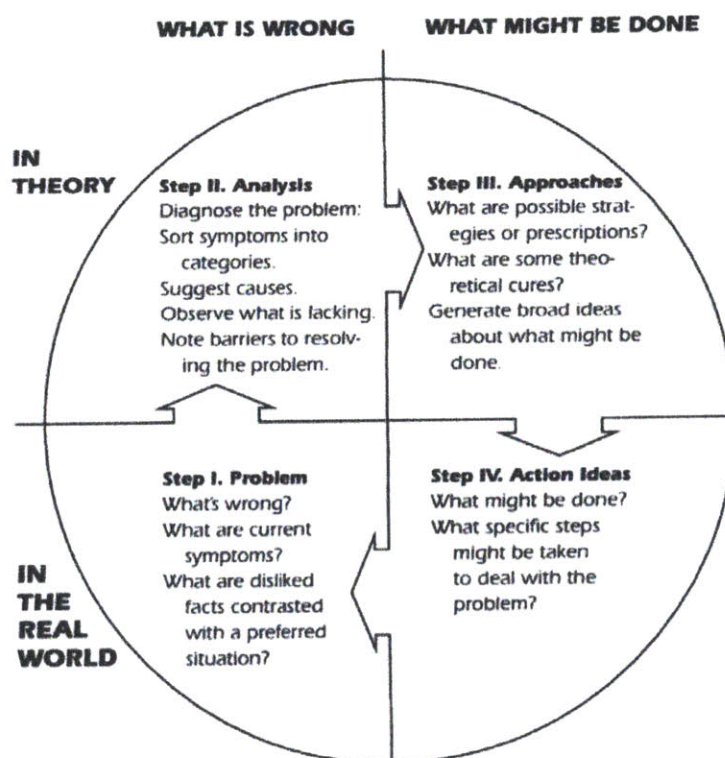


Figure 2 – “The Circle Chart,” from Fisher and Ury, *Getting to Yes*. An example of a facilitation tool designed to help parties brainstorm

Ultimately, the reason a professional neutral is necessary in a Devising Seminar is that someone needs to be primarily concerned with the flow and success of the process itself. Participants need to be free to focus on their engagement with other participants and to concentrate on how they might solve their complicated problems. The facilitator creates and protects the space that is most likely to support the participants’ work.

#### *Process Design – Private forum, no media or observers*

Devising Seminars are held in private, without observers or a media presence. Note-takers from the facilitation team capture the content of the discussion rather than having the meeting recorded, but none of the thoughts or ideas are attributed to their authors. The rationale for

this strict code of confidentiality is that participants are more likely to keep an open mind and engage more freely in generating options if the meeting is not being observed or recorded. Participants can depart from the party line, if necessary, without fear of retribution from their own constituents. This allows them to explore trades that “exploit differences” and consider the merits of certain arguments they may feel forced to reject outright in public for political or other reasons.

One result of this arrangement is that the ideas, once generated and recorded, must stand on their own merits. Since the summary of the meeting captures the proposals but does not name their origin, no one outside the room knows who was at the meeting, or who put forward or supported the ideas. When the proposals make their way into other conversations, they carry neither the blessing nor the curse of an advocate.

There are big challenges associated with holding “secret” meetings. First, how to persuade people to come if they don’t know who else will be attending? It is difficult to convince influential people, with many demands on their time, to make space for any voluntary activity, much less one in which they will be asked to lay aside their differences and engage in collaboration with an unknown group of “others” – some of whom may be long-term adversaries. Even if they want to come, and are willing to make the time, it is possible that public officials would feel obliged by their position to disclose their participation.

The reputation of the convener or the facilitator can help. When Martinez was organizing the PIN meetings on trade and the environment, the Rockefeller Foundation was funding the effort. Their reputation was enough, she said, to persuade top officials at the World Trade Organization and other organizations to participate, even without knowing who else would be in attendance. At the Program on Negotiation, no doubt the Harvard name and Roger Fisher’s personal clout provided sufficient motivation for some participants to accept an otherwise blind invitation. One can also hope that over time successful Devising Seminars could gain their own persuasive reputation as an effective process for developing a range of possible solutions to difficult problems.

Potential participants may also develop trust in the professional neutral or the process itself via an effective assessment. During the assessment, a neutral may meet with a host of individuals to learn more about the conflict and try to understand the key concerns as described above. Most or all of the individuals interviewed may also be invitees, and their personal interaction with the neutral may give them confidence in the process. The written assessment may play a role in persuading someone to participate. If the assessment is compelling and fair-minded, and if it has accurately framed the problem, the actual substance of the proposed meeting may tip the scale for a skeptical invited participant.

Another risk associated with hosting a private meeting is that the code of confidentiality is unenforceable. Discussing confidentiality as a group early in the process can help mitigate this risk, but in the end the participants must collectively be willing to hold their tongues.



### *Product – Strategically distributed summary*

When Roger Fisher organized Devising Seminars, the outcome was a “memo of advice to a person of influence.” (Ury 2013a) It appears, in fact, that Fisher organized each Devising Seminar with a target audience in mind. His Devising Seminars seem to have been formulated specifically to generate a product that would serve a specific need. The meeting that produced a memo on the one-text procedure for the Camp David Accords is a prime example.

The product of a Devising Seminar could be a memo to a specific person, or a multi-page summary posted on a public website, or something in between. At times, the intended audience may be clear from the beginning, in which case the format of the summary product may be decided well in advance. In other situations it may be less clear who will benefit from the product, so its shape and style may have to emerge during the assessment or in the seminar.

In terms of content, as mentioned above, the substance is not attributed to the participants. The legitimacy of the document would be called into question, however, if there were no information about its origin. The summary should include a simple statement describing Devising Seminars in general, followed by basic meeting details, including when and where the Devising Seminar was held, who convened it, who facilitated it, and general types or categories of the people who attended.

Thinking carefully about who should receive the summary of a Devising Seminar can shape how the meeting is designed, who is invited, and what specific areas of problem-solving the group will focus on. Anticipating the audience for the summary applies similar pressure on the process design from the back end that the assessment creates from the front end.

The facilitation team prepares the meeting summary from notes taken during the meeting. The summary should then be distributed in draft form to the parties who were present in the meeting for their review before it is distributed.

### *When to Use a Devising Seminar*

The range of conflicts that could benefit from a Devising Seminar is impossible to define at this time. More experimentation is necessary to develop a theory about when and where the method is best applied, but the concept is based on some assumptions that form the beginnings of a diagnostic.

In a general sense, Devising Seminars are in the category of high-stakes interventions. Simple issues with a small number of stakeholders or low risk outcomes seem unlikely to benefit from a Devising Seminar.

The conflict must also have political exigency. (Martinez 2013) The issues need to be important enough to draw out the involvement of the highest-level representatives on all sides. If lower level members of the organization or community can negotiate outcomes without the sanction or expertise of their superiors, other formal or informal methods that require less preparation or privacy, and lower commitment from the top, are likely better models to use.

Since Devising Seminars are essentially brainstorming activities with the goal of generating *yesable* options, perhaps two conditions must be true at the same time: 1) The conflict must be obvious, but 2) a way forward is not. On condition one, it seems reasonable that a Devising Seminar will only help if the stakeholders are aware they are in conflict. For

example, standard agricultural practices in a rural area may be threatening the local water supply, but if no one in the community is concerned about it, some public education or activism would be a better next step than a Devising Seminar.

On condition two, it is important to acknowledge that the existence of conflict does not equal the absence of appropriate methods to deal with it. As discussed previously, some dispute-handling systems manage flows of disputes quite effectively. A (debatable) example is grievance mechanisms for labor/management disputes. In systems with adequate dispute controls in place, a Devising Seminar will probably not add value.

The confidential forum of the Devising Seminar is not necessary if parties are in conflict and their representatives can entertain a variety of solutions in the public eye without losing face. This situation is uncommon because it must be true of all parties at once. More often, representatives are constrained by marching orders from above or social pressure from below. If the spokespeople in a conflict remain positional, especially in the face of offers from other parties to negotiate, they are probably obliged to stick to a script in public, and would likely benefit from the confidential environment of a Devising Seminar.

Stakeholder groups in a conflict often have their own complicated hierarchies and mix of individuals with distinct interests that make it difficult for a representative to say much publicly lest she get into trouble with a faction within her own constituency. Devising Seminars could be particularly helpful in this scenario.

Another indicator might be that a problem-solving process is stalled because efforts to develop solutions using other methods have failed. However, if the parties are uniformly confident that they are capable of working out their differences without professional neutral assistance, a Devising Seminar is probably more than they need.

#### Flexibility in the Framework

It should be self-evident from the lengthy description of the framework that a Devising Seminar could take many forms. It could be one meeting, or a series of meetings. The idea-generating activities could focus on actions at the local, regional, national, or international level. A Devising Seminar could take place as an independent activity or as one step in a larger process that includes decision-making or commitment-seeking later on. Whatever form the seminar takes, the simple goal is to generate the best set of *yesable* options the group can devise.



## CHAPTER 4

### Case Study: Devising Seminar in Santiago, Chile – January 2013

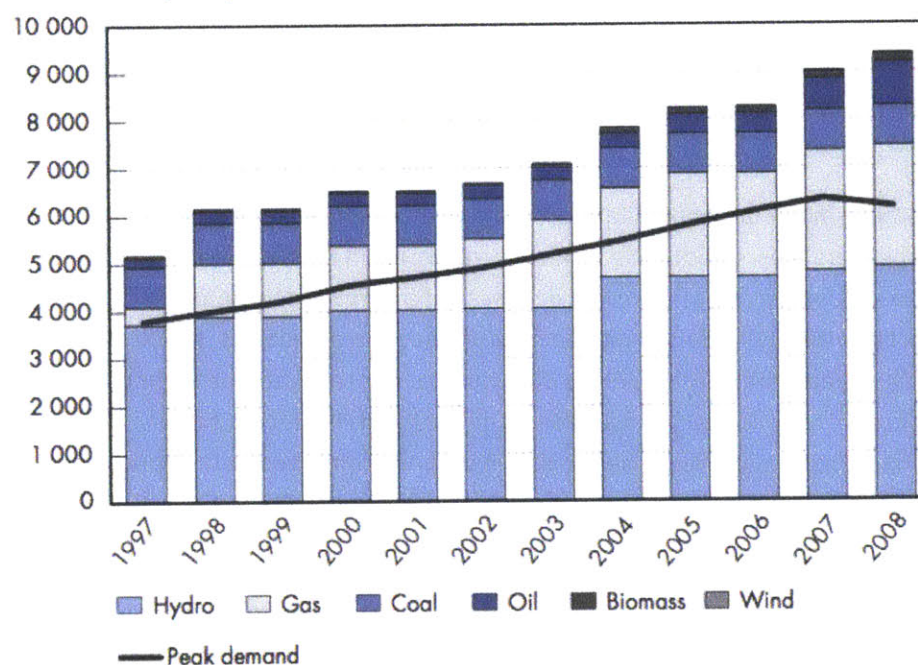
*“At the heart of the dams debate are issues of equity, governance, justice and power – issues that underlie the many intractable problems faced by humanity.”*  
World Commission on Dams Final Report, 2000

Conflicts about hydropower development in Chile have been the subject of international attention over the past decade. Currently, the most prominent venture is HidroAysén<sup>4</sup>, a proposed project to build five massive dams on the Baker and Pascua Rivers, in the Aysén region of Patagonia, and a 500-mile transmission line to carry the electricity generated by the dams from southern Chile to the capital city of Santiago. While the scale of the project is greater than any previously proposed in Chile, the issues in the debate are reminiscent of previous and ongoing conflicts.

To comprehend the complexity that characterizes hydropower conflicts in Chile, it is important to recognize where overlap occurs between many related factors, including:

- Hydropower is Chile’s most reliable and abundant source of electricity and has provided Chile’s baseload supply of electricity for decades (see Figure 3)

**Installed Capacity and Peak Demand in the SIC, 1997-2008 (MW)**



**Figure 3: The SIC is the Sistema Interconectado Central, the power system that supplies 90% of Chile’s population with power. (International Energy Agency 2009)**

<sup>4</sup> <http://www.hidroaysen.cl/>



- Hydropower has its environmental benefits and disadvantages – at once considered clean and renewable *and* environmentally devastating with a dubious carbon footprint over a project's life cycle
- Water rights in Chile are almost entirely privatized and concentrated in the hands of just a few multi-national companies. (81% of all non-consumptive water rights in Chile are owned by the Spanish/Italian company Endesa – the company backing HidroAysén) (Larrain 2012)
- One of Chile's most valuable economic sectors is mining (particularly copper), which is both energy-intensive and water-intensive
- The largest copper production company in the world is CODELCO, a state-owned Chilean company (International Energy Agency 2009)
- Some of the same powerful actors in the energy sector are also giants in the Chilean extractive industry (Larrain 2012)
- Due to Chile's very long, narrow geography, people and resources are unevenly distributed, as are the demands for those resources. The demand for electricity is high in urban areas, but the capacity for generation is high in rural areas (See Figure 4)
- Chile's environmental assessment process lacks meaningful public participation guarantees or requirements (NRDC 2011)
- Indigenous regions tend to be water-rich rural areas and vice versa (areas with water resources are often traditionally indigenous) (Zambrano-Barragán 2012)
- Chile's indigenous populations are politically disempowered and the majority are economically and educationally disadvantaged (Aylwin 2002)
- Chile's indigenous population is diverse and lacks unity. 80% of the indigenous population is Mapuche, but even within Mapuche, there are many internal divisions (Aylwin 2002; Chile Census 2012)
- The long history of the interactions between the majority population and indigenous communities in Chile is fraught with violence and oppression (Larrain 2012)

In addition to these many factors, Chilean scholars and citizens have become increasingly vocal over the past several years about the lack of citizen voice in decision making in the country. Chile's tremendous economic growth has masked a very serious democratic deficit in its political and social culture. Chile's strong rise in GDP since the mid-1980s, which started with liberalization policies under Pinochet's military dictatorship, has resulted in a higher standard of living and greater access to social services and basic public goods for most Chileans. While these advances are positive, economic growth has occurred without commensurate growth in a healthy civil society. Thus 25 years after the transition to democracy, Chile still lacks many basic institutions and policies that guarantee public participation and stakeholder involvement in public decision-making. (Fuentes 2012; NRDC 2011)

### Chile's 15 Administrative Regions



**Figure 4: Chile's geography presents inherent challenges. Most of the population is in the center (Regions V, VI, VII), while most of the natural resources are in the north and south (Image from the International Energy Agency 2009)**

Hydropower development is complicated by all of these factors, resulting in persistent conflict over the past twenty years. The first dam project in Chile to receive global attention because of conflict was Ralco, the second and largest dam in a system of six Endesa dams on the Bío Bío River in Region VIII. The first dam, Pangue, displaced 100 Pehuenche (a subset of Mapuche) individuals and flooded approximately 1,000 acres. Pangue was completed before Chile had any protections in place for indigenous land rights or the environment, so no environmental assessment was done, nor were the Pehuenche families consulted. By the time plans for Ralco were underway, Chile had passed both environmental and indigenous protection laws (although both lacked the regulatory and operational support necessary to adequately

enforce them). Endesa worked quickly to get an environmental assessment completed and reviewed by an ad-hoc committee, which approved the project despite its failure to pass 20 separate agency reviews. The only stipulation was that the 675 Pehuenche people who would be displaced by the deluge of water covering 8,500 acres of land behind the dam had to voluntarily agree to relocate. (Aylwin 2002; Silva 2004)

Most of the families agreed to settlements early in the process, but between 1996 and 2003, five Pehuenche women known as the “Nanas” held out and led the opposition. An extremely adversarial situation unfolded. The convoluted process included lawsuits, protests, negotiations, and changes in indigenous law and environmental policy. In 2003, the Nanas acquiesced and signed relocation agreements. The dam was built in 2004. (Silva 2004)

A more recent hydropower conflict had a different process and outcome. In 2006 a Norwegian company, SN Power, bought water rights on a number of rivers in the Panguipulli area of Region IX. Their plan was to build three run-of-the-river<sup>5</sup> projects on the rivers Liquiñe, Reyehueico, and Maqueo. The company showed some commitment to community engagement from the start. They hosted an official meeting in Norway with a Mapuche emissary, who signed a formal document of agreement. This agreement, however, was rejected by the emissary’s own community upon his return. The company and some members of the community also tried to institute a *Mesa de Diálogo* (Dialogue Table) as a forum for community members and company representatives to meet regularly to discuss issues and ideas. The *Mesa de Diálogo* was facilitated by two anthropologists who had been hired by SN Power and a Mapuche woman from Panguipulli who had received professional facilitation training specifically for the *Mesa*. Among the Mapuche families, however, many questioned the motivation for the dialogue table and did not use it for authentic exchange. The company also offered to fund development projects that the community and company would design together. Despite all these efforts, after two years, SN Power did not gain the support it sought and so decided to abandon the project. The community saw this as a victory, but it may be temporary. SN Power sold the water rights to yet another investor, whose plans for the water are unknown, but unlikely to complement the interest of Mapuche communities to maintain their traditional way of life. (Aponte 2012)

## Getting Involved

Currently, these and other hydropower-related conflicts strike very close to home in Valdivia, a city just 60 miles west of Panguipulli where Universidad Austral de Chile (UACH) has a campus on Isla Teja in the Valdivia River. In late 2011, UACH received an invitation from the MIT International Science and Technology Initiative (MISTI-Chile) to contact MIT professors to apply for joint funding for research grants. Professor Teodoro Kausel had taken an interest in hydropower conflicts and had been seeking ways for UACH to get involved, particularly in nearby

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<sup>5</sup> Run of the river projects divert water from the main stretch of a river into an underground channel with one or more turbines. The water flows through the turbines by gravity and is then funneled back to the river farther downstream or into the river’s outfall, such as a lake. Run-of-the-river projects have arguably lower environmental and social impacts than traditional dam projects because no flooding and detention is required, but other issues arise such as changes to the water temperature and natural flows.



conflicts in the Los Ríos region. Kausel contacted Professor Lawrence Susskind in the Department of Urban Studies and Planning at MIT and together they applied for a grant from MISTI-Chile to do research on collaboration and hydropower in Chile. Professor Susskind asked me to help lead the project.

The Devising Seminar was not part of the original research proposal, but it developed out of the information we gathered during the first several months of research. At first the MIT/UACH/Harvard research team divided into three groups to focus on water governance, indigenous rights, and civil society in Chile. Each group prepared a short working paper that gave an overview of their respective topic in the context of hydropower development and offered examples of how conflicts in other places had been addressed using collaborative processes that could be informative and useful in Chile.<sup>6</sup>

The working papers were executed with supervision from Professors Kausel and Susskind and José Aylwin who, in addition to working as a professor of Indigenous Rights at UACH, is a human rights attorney and expert on indigenous law. Aylwin is also the Co-Director of Observatorio Ciudadano, a Chilean NGO that actively advocates for Mapuche and other indigenous communities in various issues, including hydropower conflicts. Through Aylwin, the MIT/Austral research team was able to meet personally with representatives of Mapuche communities in Panguipulli that are currently engaged in a disagreement over yet another Endesa hydro project on Neltume Lake. Professor Kausel also orchestrated in-person meetings with other stakeholders, including an engineer from Endesa, several government representatives, the head of a luxury resort near Lake Neltume, and various academics with interest or expertise in some aspect of the conflicts.

From the beginning, the research team had aspirations to engage a set of stakeholders in some kind of collaborative activity. Shortly into the project, Professor Susskind introduced the concept of a “Devising Seminar,” which he described at first as the type of faculty-led activity Roger Fisher had created. He suggested that UACH could host a similar meeting – a confidential, collaborative brainstorming meeting with UACH professors and key leaders from the different stakeholder groups.

Over the months that followed Susskind’s original suggestion, the concept of the meeting we would host and run began to morph and until we settled on a Devising Seminar in Santiago that was facilitated by professional mediators rather than moderated by a panel of academics. The meeting placed a premium on face-to-face interaction among the stakeholder representatives instead of obtaining the advice of scholarly experts. A depiction of that Devising Seminar follows, along with an analysis of what went well and what could be done differently in the future.

### **Seminario: Nuevas Formas Colaborativas de Decisión Sobre Hidroelectricidad**

In July 2012, during the research trip to Panguipulli, I had the opportunity to sit with a group of Mapuche residents in a large room in a simple building that appeared to serve several

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<sup>6</sup> These three working papers are archived on MIT’s Science Impact Collaborative website <http://scienceimpact.mit.edu/>

community functions. Approximately 30 local residents were assembled to speak with our team of nine researchers. After about an hour of listening to their stories and hopes for the future, one woman looked directly at me and asked, “What can you do to help us?” I responded honestly. “I don’t know. That is exactly the question we are trying to answer.”

What should be done? The enormity of the conflict was overwhelming, and our research thus far had uncovered layers of complexity without revealing any obvious next steps. What we knew for certain was that the dispute in Panguipulli was not unique – it was part of a broken dispute-handling system. Where would things need to change, and at what level, in order to make a difference for this community and others in similar situations?

The Devising Seminar was one way to ask that question. We figured if we could get the people who are in the best position to understand the systemic issues impacting hydropower conflicts in Chile in a room to talk about the right question, some good ideas might emerge. We formulated the meeting around the query, “How can communities, government, indigenous groups, and environmental interests create better opportunities to raise concerns and participate in decisions about hydropower development?” We set a target to hold the meeting a few months later.

### Preparation

We did not consciously approach the first several months of our work on the project as an “assessment” in preparation for the Devising Seminar, but our research and writing, the exchange trips between Chile and Massachusetts, and our visits with stakeholders all served as our orientation to the issues and the players in the conflict.

Building on those efforts, our first deliberate step to plan the Devising Seminar was to compile a list of possible stakeholder groups who should be represented. Our Chilean colleagues put together a preliminary list of about 25 individuals or individual roles in the public sector (central government, regional government, and parliament), communities (represented by NGOs), industry, media, and “other experts,” such as a former regulator with the Central Bank.

This list went through several cycles of review among the team members. We filled the empty roles with actual names and added to the list until we had approximately 30 invitees. Our hope was to have 12 – 18 people attend.

We named the meeting “New Ways to Collaborate in Hydropower Decision Making” and, after attempting various ways to translate the term “Devising Seminar” into Spanish, our UACH colleagues recommended keeping the name in English. They said that, not only did the term fail to translate adequately, but having an English name gave the process a certain flair that we hoped would be compelling to the participants.

We contemplated holding the meeting over more than one day but decided on a half-day, assuming that the people we were inviting would not be able to attend for any longer. We held the meeting in Santiago, rather than Valdivia or somewhere closer to any of the current conflict sites, because most of the people in the list were based in Santiago.

Our research had informed us that there is no consensus on any aspect of the conflicts around hydropower. We knew that if we were to have any hope of getting the participants in a similar frame of mind, we would need to frame the issues in advance the best we could. We



took the working paper we had written on Chilean Civil Society and modified it significantly. The new paper, named “Conflicts and Stakeholder Participation in Hydropower Development in Chile,” argued that the status quo decision-making processes in Chile are destructive and that better stakeholder participation would ease tensions and improve the decisions. The paper included some examples of more successful decision processes with similar characteristics in Peru, Brazil, and Canada, and concluded with recommendations for changes that communities, companies, and government could make to increase stakeholder participation in decisions about hydropower. The paper also included definitions of 14 “key terms” related to consensus-building. When we finished the discussion paper, we sent it to invitees, including confirmed attendees and those who had not yet responded.

While we were preparing the paper, we were also working with two mediators from the Consensus Building Institute (CBI), Betsy Fierman and David Plumb, to prepare for the meeting. Betsy and David are American, but both are married to Chileans, and Betsy had recently moved to Chile (David had also lived in Chile for many years). The facilitators worked closely with our MIT/UACH team to create an agenda for the Seminar.

### *Before Survey*

A couple of days before the seminar, I asked the participants to take a short “before” survey about their expectations for the meeting and their views on hydropower conflicts. (Appendix D) I used an online portal and sent the link to the participants. A few responded but most filled out the survey in hard copy on the day of the meeting in the few minutes before the meeting began.

The survey was the first in a series of three that I designed to test whether the participants in the Devising Seminar experienced a change in their relationships with others in the group and a change in the way they thought about the potential for collaboration on hydropower development issues. They took the next survey immediately following the Devising Seminar and the third three months later. The before survey asked a few demographic questions and whether the participants had discussed or worked on hydropower issues with a diverse group previously, what obstacles impede collaboration on hydropower, and what opportunities they see for collaboration in this arena.

All ten individuals who attended the Devising Seminar took the survey. Their responses showed that working in diverse groups, and with individuals in other sectors was a familiar activity for most of them.

On obstacles to collaboration, several people cited the absence of laws, regulations, or “spaces” that support, let alone require collaboration. One respondent said there is a lack of information, and that the benefits for communities to engage in hydropower development are simply not there. Other responses included lack and visions or points of view being misaligned. One person said Chileans lack a sense of “we” on this issue. Another claimed that prejudice and a lack of democratic culture have gotten in the way.

These observations were in line with what our year of research leading up to the Devising Seminar had revealed, except that I was surprised to see only one person mention past projects or a history of conflict. One person also included a cryptic statement, which translates



roughly to “everyone takes different stands before the same question, rather than asking different questions.” The meaning of this statement only became clear after the meeting, when much of the discussion focused on differences in worldviews and perceptions of the problem.

#### The Meeting

The ten participants in attendance represented government, NGOs, and the hydropower industry. (See Table 4) Professor Kausel represented the MIT/UACH collaboration. The facilitation team included David Plumb, Betsy Fierman, and Professor Susskind, with five note-takers from our research team, including myself. The meeting was conducted entirely in Spanish, with real-time English translation through a live interpreter for Professor Susskind. The meeting lasted just four and a half hours.

**Table 4 – Groups represented by participants in the Devising Seminar, January 2013**

Government	Servicio de Evaluación Ambiental (national government - Environmental Ministry) Dirección de General de Aguas (regional government oversight on water)
NGOs	Consejo de Defensa de la Patagonia – Anti-dam group Casa de la Paz – Sustainability advocates Observatorio Ciudadano – Indigenous rights Chile21 – Progressive think tank with an indigenous rights group
Industry	Generadoras de Chile – Industry association for power companies Colbún – Large hydropower company in Chile

Professor Kausel welcomed the participants and opened the meeting on behalf of the conveners – UACH and MIT. Professor Susskind gave a brief presentation on Devising Seminars. David Plumb gave a short presentation summarizing the key points of the discussion paper that had been sent to participants in advance in order to frame the meeting.

The first block of time for group discussion was supposed to be dedicated to a single question, such as “When is consultation ‘good’ or ‘appropriate,’ and how should it be done, especially when indigenous groups are involved?” The facilitators offered this and three other solution-oriented questions as possibilities to the group and invited them to choose one or create another. The dialogue never took the intended direction, however, because the participants were anxious to express their views on why conflicts continue to happen or what is broken about the system and the society. For reasons I attempt to explain below, it was hard to move the participants away from diagnosis and into problem-solving.

Nonetheless, as they told their stories, some examples of different or better approaches came to the surface. One participant talked about how prejudice on all sides inhibits real dialogue and then shared an experience about a project he had been involved in with promising results. He said some representatives from a hydro company and an impacted community worked together to design a set of community benefits that satisfied everyone and built a relationship of trust. Although the participants seemed unable to sustain a problem-solving

conversation at first, in the last two hours of the Devising Seminar, the facilitators were able to distill what they had heard to that point, and the participants were ready to engage in a more fruitful discussion about options for positive changes.

The most authentic way to capture the ideas the group generated was in terms of the problems they sought to address. These problems fell into three main categories: 1) Differences in worldviews or visions of development, 2) Issues related to relationships between various actors in the system, and 3) Institutional or structural weaknesses in the system. The meeting summary we wrote (Appendix A) provides more detail on the participants' views on these three categories of problems, but the ideas they generated to address them are included in Table 5.

**Table 5 – Specific ideas generated at the Devising Seminar, January 2013**

<b>Suggestions for addressing the issue of competing worldviews</b>
<p><i>Informal channels for conversations about values</i></p> <ul style="list-style-type: none"> <li>▪ A recurring theme in the Seminar was the lack of listening and understanding among different stakeholder groups and segments of Chilean society. Almost all participants, regardless of the sector they came from, mentioned feeling “misunderstood” by other stakeholders. The proposal to create informal channels to talk about values was suggested as a way to create space for listening on all sides.</li> </ul>
<p><i>Consultation about consultation</i></p> <ul style="list-style-type: none"> <li>▪ Existing Chilean laws and policies about consultation with indigenous communities were widely framed as inadequate. In response to this, one participant suggested that a consultation should be done to determine what legitimate consultation would look like for the people being consulted.</li> </ul>
<p><i>Gather case examples</i></p> <ul style="list-style-type: none"> <li>▪ Several representatives pointed out that Chile is not alone in dealing with the issue of competing worldviews on development. Good and bad examples from Chile and other countries and projects dealing with the same issues should be gathered and studied.</li> </ul>
<p><i>Develop parameters or criteria for what makes a “good” project</i></p> <ul style="list-style-type: none"> <li>▪ Understanding should translate into concrete ways of evaluating how well a particular development proposal matches the various worldviews or values of the people who could be affected by it.</li> </ul>
<p><i>Insert “civic participation” into the process of policy development</i></p> <ul style="list-style-type: none"> <li>▪ One way to increase the chance that different worldviews will be taken into account in policy development is to require meaningful participation throughout decision making processes.</li> </ul>
<b>Suggestions for improving relationships between the stakeholders</b>
<p><i>Radical gestures to demonstrate trustworthiness</i></p> <ul style="list-style-type: none"> <li>▪ One idea was that any actor could make a “radical gesture” to demonstrate willingness to “change the game” and collaborate. It was implied that hydropower companies would likely need to be the first to make this kind of move, but it was recognized that a radical gesture of this kind from any stakeholder could build trust and improve relationships.</li> </ul>
<p><i>Need for catharsis</i></p> <ul style="list-style-type: none"> <li>▪ Participants emphasized the importance of catharsis, or “clearing the air”, in order to begin to shift from focusing on past transgressions to creating constructive ways forward. A</li> </ul>



suggestion was made to open some space or design a process specifically to encourage the different groups to express their grievances.
<i>Increase the influence of other actors in decision making processes</i> <ul style="list-style-type: none"> <li>Some said the best way to build trust would be to expand the degree of influence that impacted communities have on the decisions that affect them.</li> </ul>
<i>Learn from examples</i> <ul style="list-style-type: none"> <li>A participant cited a personal experience with a previous project in which relationships were strengthened due to the company and the community's early investment in a collaborative process. This and other examples could be explored as models.</li> </ul>

<b>Suggestions for institutional or structural improvements</b>
<i>Improve the consultation process</i> <ul style="list-style-type: none"> <li>Create an independent monitoring entity. A participant noted that in other parts of the world, the consultation process with indigenous communities is monitored and evaluated by an independent third party that has been mutually appointed by the communities and the government.</li> <li>Participants called for legislation to define "consent" and to make the decision criteria more concrete.</li> <li>One participant suggested that a formal discussion take place to answer the question, "What would a trustworthy consultation process look like?"</li> </ul>
<i>Regulate benefit sharing</i> <ul style="list-style-type: none"> <li>Several participants called for norms or standards to determine distribution of benefits. One participant suggested that equity should not be left to the goodwill of the companies. There should be laws that (for example) require hydro plants to dedicate a portion of the profits to the communities in which they operate. Another participant said the regulation should require companies and communities to decide together which projects should be pursued and how before the projects get into the environmental review process.</li> </ul>
<i>Social impact analysis</i> <ul style="list-style-type: none"> <li>While some social impact analysis is done as part of the environmental review, the suggestion was made to adopt a more rigorous social impact assessment as a requirement in the permitting process.</li> </ul>
<i>Monitor existing projects</i> <ul style="list-style-type: none"> <li>Drawing on an example in the discussion paper that was distributed in advance of the seminar, a participant recommended that companies and communities could design and implement joint monitoring efforts for existing projects. These efforts could be approached as experiments or pilot projects.</li> </ul>
<i>Build communities' capacities to engage in decision making</i> <ul style="list-style-type: none"> <li>Government or project sponsors should invest resources in building local communities' capacity to engage in every aspect of the decision making process, from territorial planning to negotiating community benefits to monitoring agreements.</li> </ul>
<i>Improve the civic participation opportunities in the environmental review process</i> <ul style="list-style-type: none"> <li>Specifically, some participants suggested lengthening the public review period in Chile's environmental impact assessment process (SEIA) beyond 30 days. More broadly, participants suggested inserting additional civic participation opportunities in the environmental impact assessment process, particularly earlier on in the review process and in more meaningful ways.</li> </ul>



### *After Survey*

Immediately following the Seminar, while the participants were still in the room, I asked them to complete the second survey (Appendix D). Everyone agreed. The survey asked the participants whether the meeting had been useful, whether they had any plans to follow-up with others from the seminar, who else should have been invited, what they learned, and which of the ideas generated during the meeting was most intriguing to them. I also asked if they thought anything would change because of the Devising Seminar.

The results show that participants, overall, had a positive experience in the exercise. Some said it changed their understanding of the issues or the other participants' perspectives on the issues. Others said they learned more about consensus-building or collaboration and could see a role for it in hydropower conversations in Chile. Their confidence, however, in anything changing because of the meeting was quite low, and only one person indicated having plans to follow-up with other participants after the seminar.

They provided several suggestions about other individuals who should have been involved in the meeting. Some of those they suggested had been invited, but did not attend, while others were a surprise, including a Member of Parliament, the media, and simply "more people."

Their comments concerning obstacles to collaboration shifted dramatically from institutional concerns before the meeting to "better process" concerns in the after survey. Several people before the meeting named laws, regulations, and rules as the key drivers of hydropower conflicts in Chile, but afterward their responses included very few mentions of structural limitations. One post-survey response said, "There is an opportunity, and it is needed, to identify processes/actors who can jointly come up with answers to complex problems." Another wrote, "Know the opinions of the whole community early. Be transparent and provide accurate, clear information." One person indicated a shift in understanding of the impacted community members' point of view on hydropower projects. She or he said, "The fact that it's not possible to "reject" a project – that there is no veto power – leads to a fear of participation." In the immediate aftermath of the meeting, many had turned their thoughts to better communication and understanding which could lead to adaptive responses, even within the constraints of a compromised system.

The most perplexing feedback was the participants' reaction to the set of ideas they generated. A few of the participants responded as I expected to would to a question about the ideas. They named a specific action step or new idea that impressed them. These responses included "making a 'radical gesture' to develop trust," "generate concrete examples and spaces for informal conversations," and "have a system to monitor the fulfillment of agreements between the companies and communities."

The rest of the responses, however, seemed to indicate a lack of awareness that any ideas had been generated at all. To be fair, at the end of the meeting the ideas were not organized into the tidy categories cited in Table 5, nor were the ideas articulated as succinctly (that synthesis took place as the facilitation team later reviewed the notes and wrote the summary), but it was clear from over half of the respondents that the purpose of the exercise had not penetrated their understanding. As a practitioner this was disappointing. As a

researcher, it highlighted an area where more experimentation is necessary to improve the model.

#### *Post-post Survey*

Three months after the meeting, I was curious what the participants would remember from the Devising Seminar. I had recently sent them the meeting summary and received comments from nearly everyone, so there was reason to believe the meeting results were fairly present in their minds. I asked them by email to respond to a short survey (and reminded them twice), but only three people took it. I asked whether they had been in touch with anyone from the meeting as well as two different questions to divine whether they had retained anything specific from the conversation. All three responded that they had not been in contact with anyone from the meeting. I repeated one of the questions I had asked immediately following the meeting: “Of all the ideas generated in the Devising Seminar, which was most intriguing to you?” One person skipped the question, one said, “the need to incorporate the point of view of indigenous communities, and how that view is affected by their ‘ancestral rights.’” The other said, “That it is necessary to start involving people long before any legal process begins.” It is impossible to draw any conclusions about the meeting, or its impact in general, based on this second survey except to say that for two of the participants, there appears to have been some lingering impact on the way they think about collaboration and hydropower development.

#### *Impact*

Going in to the seminar, I was most concerned about the question the woman in Panguipulli asked me: “What can you do to help us?” Would the Devising Seminar make any difference? Would the group generate good ideas? Would they build or improve their relationships?

These are high expectations to place on a four and a half hour meeting, but our Devising Seminar was never a standalone activity – it was one step in an ongoing process to promote more collaborative approaches to resolving difficult issues surrounding hydropower development in Chile. I am dismayed that the meeting appears to have had no impact on the relationships of the people who attended. I am pleased, however, by the volume and quality of the ideas that were generated at the meeting – not because any of them are new ideas in the world, but because a few of them were new to a few of the people who attended. Also, the fact that the ideas are compiled in a single document that is now publicly available gives me hope that some “ripple effects” from the meeting are possible.

#### *Summary*

Table 6 captures what I learned from our Chilean experiment about each of the five key elements of the Devising Seminar. Chapter 5 is dedicated to a more comprehensive exposition of my conclusions and recommendations.



Table 6 - Chile 2013 Devising Seminar: Summary Table of Results and Conclusions

Key Elements of the Devising Seminar		Case Study	Conclusions	Open Questions
<b>Purpose:</b>  <b>Invent options</b>	<ul style="list-style-type: none"> <li>Wicked problems do not have objective, correct answers. Decisions about what to do require judgment</li> <li>Developing a range of possible solutions improves the likelihood that a wise choice will be made</li> <li>"Value Creation" does not happen on its own (i.e. a range of options will not emerge without intention)</li> <li>A forum dedicated exclusively to brainstorming reduces pressure to make commitments and increases likelihood of creativity</li> </ul>	<ul style="list-style-type: none"> <li>Hydropower development in Chile is a classic wicked problem. It lacks obvious "best" options</li> <li>The group produced a large set of options, informed by all the stakeholders, grouped by three main categories:               <ol style="list-style-type: none"> <li>1) understanding divergent worldviews</li> <li>2) improving relationships</li> <li>3) improving institutions or rules</li> </ol> </li> <li>The group struggled to get into a creative problem-solving mode</li> </ul>	<ul style="list-style-type: none"> <li>Devising Seminars can effectively generate creative options that may help address wicked problems.</li> </ul> <p>Productive, creative ideation is impacted by:</p> <ul style="list-style-type: none"> <li>Preparation (in order to frame the issues and use the time well)</li> <li>Existing relationships</li> <li>Past experiences</li> <li>Examples from other places/situations</li> <li>Expectations of feasibility</li> <li>Facilitation techniques</li> <li>Intended audience</li> <li>Informal conversations</li> <li>Time</li> </ul>	<ul style="list-style-type: none"> <li>Does the "no commitment" rule hinder or encourage creativity?</li> <li>Can stakeholders be expected to leave their positions at the door?</li> <li>Would knowing the audience for the summary in advance help the participants create options?</li> </ul>
<b>Participation:</b>  <b>Influential individuals representing the full range of stakeholders</b>	<ul style="list-style-type: none"> <li>Potential solutions should be developed by the people who know the most about the issues – the stakeholders themselves</li> <li>Builds relationships between decision-makers</li> <li>Leverages participants' power outside the room</li> <li>Constrains options to realm of possibility</li> </ul>	<ul style="list-style-type: none"> <li>Ten influential participants from various sectors: national and regional government, NGOs, academia, private sector</li> </ul>	<ul style="list-style-type: none"> <li>Having a range of views represented is critical to producing options</li> <li>The existing relationships between participants, as well as their past experiences together impact the process (for better and worse)</li> </ul>	<ul style="list-style-type: none"> <li>How do you decide who to invite?</li> <li>How do you ensure the right mix of stakeholders will actually come?</li> <li>By only inviting influential people, are the less powerful being represented?</li> </ul>
<b>Process Management:</b>  <b>Neutral facilitation</b>	<ul style="list-style-type: none"> <li>A "professional neutral" who remains impartial on the issues and helps ensure the seminar is productive</li> <li>The facilitator may oversee the preparation phases, including a</li> </ul>	<ul style="list-style-type: none"> <li>The MIT/UCh/CBI team researched the issues in advance and wrote a discussion paper that participants received in advance</li> </ul>	<ul style="list-style-type: none"> <li>A neutral facilitator appears to be necessary. At minimum, it is hard to imagine the seminar being effective without facilitation.</li> <li>The facilitation starts early with</li> </ul>	<ul style="list-style-type: none"> <li>Can a poorly trained facilitator do more harm than good?</li> </ul>



	<p>stakeholder assessment and drafting an issue-framing document</p> <ul style="list-style-type: none"> <li>• Uses specific techniques to encourage effective brainstorming</li> <li>• Observes participant interactions and intervenes to encourage participation or introduce new ideas</li> </ul>	<ul style="list-style-type: none"> <li>• Two facilitators from The Consensus Building Institute facilitated the meeting. Other team members took notes for the summary</li> <li>• The facilitators proposed the agenda and managed the dialogue</li> </ul>	<p>an assessment before the Seminar</p> <ul style="list-style-type: none"> <li>• Facilitators should be familiar with a variety of tools/techniques to encourage brainstorming</li> </ul>	
<p><b>Process Design:</b></p> <p><b>Private, confidential forum</b></p>	<ul style="list-style-type: none"> <li>• Influential people are often high-profile people as well. In public they must toe the line, which can dampen creativity</li> <li>• A confidential space allows participants to explore possibilities they may not be able to in the public eye</li> <li>• The meeting is private. Observers and media are not allowed (but the facilitation team includes note-takers)</li> <li>• The meeting is not recorded.</li> <li>• Participants do not know in advance who else will attend</li> </ul>	<ul style="list-style-type: none"> <li>• The names of the participants were kept confidential before and after the Seminar</li> <li>• The summary document lists the organizations that were represented, but none of the names.</li> <li>• The ideas in the document are not attributed to any individuals.</li> </ul>	<ul style="list-style-type: none"> <li>• No conclusions based on the case study - no attempt was made to evaluate the impact of confidentiality on the Chile seminar</li> </ul>	<ul style="list-style-type: none"> <li>• Does confidentiality really make people more willing to explore options?</li> <li>• Does confidentiality negatively impact participation (because people want to know who else is coming)?</li> </ul>
<p><b>Product:</b></p> <p><b>Options summary</b></p>	<ul style="list-style-type: none"> <li>• A summary document captures the ideas generated in the Seminar</li> <li>• The facilitation team produces the draft summary. It is reviewed by the participants before being finalized</li> <li>• The draft is made available for distribution beyond the participants</li> </ul>	<ul style="list-style-type: none"> <li>• The options summary includes 17 specific ideas generated by the participants (See Chapter 4 or Appendix A)</li> <li>• The summary was made publicly available on the MIT Science Impact Collaborative website April 2013</li> </ul>	<ul style="list-style-type: none"> <li>• The summary is necessary in order to extend the reach of the seminar. This is critical because wicked problems are embedded in extensive networks</li> </ul>	<ul style="list-style-type: none"> <li>• What are the benefits and disadvantages of identifying an audience for the summary in advance?</li> </ul>

## CHAPTER 5 – Devising Experiments

*Action research is a participatory, democratic process concerned with developing practical knowing in the pursuit of worthwhile human purposes, grounded in a participatory worldview...It seeks to bring together action and reflection, theory and practice, in participation with others, in the pursuit of practical solutions to issues of pressing concern to people, and more generally the flourishing of individual persons and their communities.*

- Peter Reason and Hilary Bradbury

Our experiment in Chile left me with more questions than answers about Devising Seminars. Some of those questions I have resolved through writing this thesis but many remain. This chapter is an attempt to circumscribe those questions in a way that invites further inquiry and experimentation.

### Evaluating the Process

Devising Seminars do not require a new set of tools and techniques. Instead, it is the combination and sequence of standard collaborative tools – as constrained by the five elements of the proposed framework – that need testing.

#### Participants and Participation

In organizing a collaborative process there is rarely an easy answer to the question “Who should participate?” There are endless questions about legitimate representation, power differences, capacity to engage and contribute, and countless others. When we started developing the list of people we wanted to invite to the Devising Seminar in Chile, the members of our team had vastly divergent ideas about who should attend and why. The guideline proposed in the framework (influential stakeholders with experience and authority) was not a sufficient filter to determine who was in and who was out. We had to negotiate among ourselves and make decisions based on other criteria that seemed appropriate for our situation. This is no doubt the way every Devising Seminar must play out to some degree, but through experimentation, I hope theory will develop to sharpen the criteria for who participates and why.<sup>7</sup>

Even then, there will be a question about who will actually accept the invitation and attend. In our case in Chile, we invited nearly 30 people and 10 came. One of our team members later spoke with a couple of invitees who did not come and they expressed confusion about what the meeting was and whether their participation would matter. There are two questions to grapple with here. First, what impacts a person’s interest in participating in a Devising Seminar? Second, how does uncertainty around attendance impact the planning and outcomes of the meeting(s)? If all 30 of our invitees had participated, the conversation would likely have been very different as would nearly every aspect of our planning, from preparation to follow-up.

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<sup>7</sup> Another question entirely is whether “influential” necessarily means “privileged” in this context and whether that means the ideas generated by a Devising Seminar will be informed only by people in the system who already have power.

Every aspect of my research and our experience suggests that adequate preparation is a major driver of more effective participation. In our process in Chile we were limited by time and resources from carrying out interviews with potential attendees as part of our assessment. Had we done so, we would have built more trust with some of the invitees.<sup>8</sup> We also would have been able to produce a summary document that captured the range of views on the issues in a more reliable and personal way than the discussion paper we wrote using other kinds of research. I assume, based on experience with other assessment processes, that if the participants had been able to read in advance a brief, accurate assessment of the conflicts as they see them, they would not have felt so much anxiety to express their views in the meeting before getting to the work of brainstorming. The facilitation team would also have benefited tremendously from a comprehensive assessment of the participants' backgrounds and points of view. Our team members had dramatically different understandings of the histories of the people in the room and the relationships between them. We didn't know as well as we might have where opportunities existed for linking interests or exploring pathways for collaboration. All of that knowledge in advance would have affected the design of the meeting and the quality of the dialogue. In our post-meeting debrief, several team members said they thought if we had been able to meet for even a few more hours the group would have gone deeper on one or two of the ideas and explored more specifics about who could do what to make a real difference. We might have gained those few hours if the participants and the team had been better prepared coming into the room.

Regarding other ways to improve the participation, I am struck by two aspects of Roger Fisher's Devising Seminars – his use of the Circle Chart and his specific question about what can happen tomorrow morning to move the conflict toward resolution. I am not suggesting every Devising Seminar should ask the same question, or use that specific chart, but both choices seem based on the principle that brainstorming needs constraints in order to be productive. Ury's description of how the chart was useful illustrates this point. He said, "The Circle Chart offered a structure...we would generate a list of conflict symptoms, then turn to possible diagnoses, then to possible approaches, and finally to action-ideas. Often ideas would pop up out of order so we would keep four flip charts side by side, adding to each. If we came up with an approach or action-idea first, we might ask, 'If that's the approach, what's the diagnosis?' or 'What's the problem to which this action-idea is a solution?' Any number of techniques might be tested, but I would like to see a series of Devising Seminars choose one or two simple constraints like these and test them with different groups to assess their relative effectiveness.

At a much deeper level, I worry about a Devising Seminar's capacity to manage dialogue about values. The response to a question like, "What can someone do tomorrow...?" is necessarily a question of strategy. But any question about *what* should be done could be turned around with the question of *why* something has to be done at all? This framing of the question was quite stark in our Devising Seminar as the people representing indigenous interests

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<sup>8</sup> During our team debrief, our Chilean colleagues stressed the importance of one-on-one dialogue in Chilean culture – something we had not talked about before. In Chile, it seems that doing interviews for the sake of good process might have had an even more powerful effect than in another context.



repeatedly returned to the fact that indigenous communities do not want to talk about what to *do* – they want it to be understood that they have an entirely different perspective on *why* and *whether* anything should be done at all. There was a desperation in the way they talked about the disconnect between their view of development versus that of the government and hydropower companies.<sup>9</sup>

Some of the views expressed during the seminar made an impression on some of the participants. They said in their surveys that they gained a deeper appreciation for the clash of worldviews as a fundamental aspect of the conflict. This is a good start, but at least one of the participants was clearly not satisfied. He asked me afterward whether I thought we would have been able to have a discussion about values with that group, even if we had had enough time. It is not clear to me that we would, but it is an important question given the kinds of conflicts Devising Seminars are designed to address and the potential for most of them to be laced with values disputes. How the structure of a Devising Seminar lends itself (or not) to producing “moves” or “actions” that help reconcile values is a question worth exploring.

### Support and Evaluation

David Fairman, one of the practitioners I interviewed during the course of my research, urged me to consider why someone would invest in a “message in a bottle” approach. This raised two issues for me. 1) Who, literally, invests in Devising Seminars (as in, who pays for them), and 2) How do you measure the effectiveness of a process that is explicitly not decision-making, but purports to contribute to the resolution of deep disputes?

In Chile, we could experiment with a Devising Seminar because we had university funding and the research case was clear. The Program on Negotiation is an academic collaboration between Harvard, MIT, and Tufts, and has also been able to host its Devising Seminars with support from academic institutions. The Parallel Informal Negotiations that Martinez and Susskind organized in the 1990s were funded through foundation grants. These models could be replicated with other academic institutions or foundations, but they do not offer clues for the “market value” of this process, or what mechanisms might be needed to fund the endeavor with government or private sector funding, or some combination. There are, of course, various ways in which collaborative processes are funded, which might work for Devising Seminars, but that brings us to the second question about the proposed value of the process to a potential funder.

Since Devising Seminars deliberately seek to promote new ideas to an audience that is broader than the people in the room and may include the public, one expects that some of the impact will be “untraceable.” But Devising Seminars could build-in follow-up mechanisms to monitor some of the ideas or some of the participants. If the results were positive, Devising Seminars would gain their own reputation over time as a process that “works.” This track record

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<sup>9</sup> To illustrate, Nicolasa Quintreman Calpan, one of the Pehuenche “Nanas” said of the Ralco dispute, “They talk to us about wealth, about giving us money. But we have pure air to breathe, we have pure water, the trees that provide us with shade, we have the Pehuen [Araucaria tree] that feeds us, the sun that gives us the light of day, and we are close to the stars and the moon, that give us light at night. We live in harmony with animals. We have Mother Earth. What wealth are they talking about?” (Silva 2004)

would make it possible to scale up the practice of Devising Seminars in collaborative spaces where impact, not research, is the primary goal.

### Recommendations for Chile

The big question in this thesis is whether Devising Seminars can contribute to the field of collaborative problem-solving. If our experiment in Chile is any indication, for significant impact to be realized, a motivated actor must take the ideas generated at the Seminar and attempt to put them into action.

Ideally, one of the participants in the Devising Seminar would be the first to respond to a call to action. The participants themselves are in the best position to champion the ideas, as they are directly involved in the conflict and they heard all the arguments for and against every proposed option. The reason these particular individuals were invited to the Seminar is because their daily decisions have an effect on the conflict, however slight or deep. If each of these stakeholder participants were to do an inventory of ideas developed at the seminar and commit to even one of the options presented, the changes could be dramatic.

The ten people in the seminar, however, are not the only audience for these ideas. The summary document is publically available so anyone looking for better ways to go about hydropower development in Chile can benefit from the proposed options. Other actors in the system could be equally or more influential than those who participated in the seminar if they felt inspired to pursue any of the recommendations.

After the actors themselves, Universidad Austral de Chile has the most significant opportunity to leverage the work done at the Devising Seminar to help ease the ongoing crises. As this thesis is being completed, UACH is considering the development of a Center for Collaboration based at its campus in Valdivia. The university is only beginning to discuss the potential structure of the Center, its specific mission and scope, staffing, and all aspects of its development and operations. It is understood that the intent of the Center would be to promote social spaces where collaboration on difficult social issues and public policy can occur. Their first projects should build on the work we have already done and the ideas that were generated in the Devising Seminar.

UACH could gather this same group of stakeholders, or another, to participate in a decision-oriented consensus-building process aimed at implementing some of the ideas from the seminar. This process would require capacities that UACH has been developing since the beginning of the MIT/UACH collaboration in 2012 and may take some time to fully realize. In the meantime, MIT and CBI can continue to assist. As an interim or complementary step, UACH could use the ideas in the Devising Seminar summary as the basis for an academic conference, or design a set of research proposals for students based on some of the suggestions. Professors and students at UACH who study these conflicts or related issues could be encouraged to write brief critical memos that attempt to assess the feasibility or impact of any one of the options using a collaborative framework that the new Center could teach. These are just a few ideas that UACH could consider. The key is to use the results of the seminar to promote further action, and for UACH to take the lead, as the original convener and next-best actor, after the stakeholders themselves, to make an impact on this particular wicked problem in their own community.



## Conclusion

At some point during the development of this thesis I started to imagine what it would need to happen to make Devising Seminars a “household name” in the dispute resolution and collaborative policymaking fields. In the same way that charettes are the go-to process for collaborative design, and focus groups are a standard for testing new ideas, what would it take for people who work on big social problems to say, “We don’t seem to have a lot of good options here. Why don’t we try a Devising Seminar?”

In order for the method to mature in that direction, it would need to prove itself over time, through a lot of experimental trials. I think the following questions are particularly important to try to answer:

- 1) Do Devising Seminars consistently **produce yesable options**? Are these ideas any different or better than what might be produced if all the participants submitted their ideas independently? Are the groups internalizing the concepts of value creation and mutual gains such that the options they are developing are more inclusive of all the stakeholders’ interests than they would be otherwise?
- 2) Is the code of **confidentiality having a positive impact**? Are more people (or more important people) being turned off by the mystery and refusing to participate than the number of people attending because of the private forum?
- 3) Is the **private setting** making it easier for participants to **explore options**, or are they behaving exactly as they do in public?
- 4) Does it help or hinder the participants’ **creativity** to direct the results of the seminar to a **specific audience**? Should Devising Seminars seek to produce memos like Roger Fisher’s, or free-form lists like the Devising Seminar in Chile?
- 5) Are the **ideas turning into action**? If so, who is taking the initiative?
- 6) Is the focus on “influential” people having the desired effect? Are these people **using their influence to promote the options** that are created in the Devising Seminars? Are Devising Seminars facilitating power imbalances by engaging exclusively with those who already call the shots?

After studying the concept and running a Devising Seminar in Chile, these are the questions I think most need to be answered in order to prove the method’s potential value in the field of collaborative practice. Although I cannot say anything definitively about the method based on our single experiment in Chile, I can make some reasonable guesses about where I expect to see challenges and success.

My impression is that it was extremely hard for the participants in Chile to do or say anything different in the seminar than they would in any other setting, despite the promise of confidentiality. In our experiment several factors might have impacted their willingness to fully engage, including inadequate preparation, short meeting duration, and a small number of participants. But even assuming those factors had been optimal, the social and political relationships that existed outside the room were extremely powerful inside the room. We did not emphasize the confidentiality factor as one might in a future seminar, but I doubt anyone in



the Chile seminar would have trusted everyone else enough to depart from the party line. This, in my opinion, is the greatest potential weakness with the method.

My assumption is that the best way to encourage participants to engage would be extensive preparation including a thorough assessment so trust and common framing of the issues could develop over time. Even with adequate preparation, I think an extremely skilled mediator, armed with specific techniques for teaching mutual gains and fomenting creativity will be necessary.

The other major challenge is tracing the impact of the exercise to actual decision-making. I am persuaded that removing the expectation of commitment, and stepping back from a decision-making activity is valuable based on my personal experience working with other disputing parties as a mediator. What I am not convinced of is whether the ideas will translate into action without some sense of a pathway by which that could occur.

I think there are several remedies for this potential challenge. One variation worth exploring is naming a specific audience to direct the ideas toward, as Roger Fisher did. Another would be to ask individual participants at some point in the seminar if they will commit to something. Even if the participants don't follow-through on any of the suggestions, an outside party can take the ideas and move them forward (as I have suggested with UACH). The challenge here is perhaps determining in advance how to track the effects as they ripple out.

Despite these two challenges and the others alluded to by my questions above, I am inspired by the potential for Devising Seminars to do exactly what I set out to explore in this paper – to play an important role in providing better options for resolution of some of the most wicked problems we face. We need good ideas that meet multiple interests, and the evidence is everywhere that they are hard to find. We need to devise something better.

## ACKNOWLEDGEMENTS

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My family is constant ever, and often funny just when I need it. Many thanks to Mom for reading this paper, twice. As this thesis was born at nearly the same moment as Indiekins, I dedicate it to her. Christy has mostly left me alone – an act of selflessness that only old friends can understand. That this thesis has a mere plethora of commas, rather than an excessive overabundance, is due to her careful editing. Alyson, Crystal, and Katherine have been as watchful as mother hens – always looking out for my health and happiness. I'm grateful to Jill for doing this with me, and for Shannon, Suzette, and Dana, who stayed interested and encouraging from afar.

To my classmates, I say, we deluged it!

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## APPENDIX A – Devising Seminar Summary

# Summary of the Devising Seminar “Nuevas formas colaborativas de decisión sobre hidroelectricidad”

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11 January, 2013 Santiago, Chile

*Universidad Austral de Chile y MIT Science Impact Collaborative*

## INTRODUCTION

On January 11, 2013, ten influential individuals from various stakeholder groups came together for a *Devising Seminar* to discuss better ways to approach hydropower development in Chile. The Seminar was hosted by a joint team from Universidad Austral de Chile (UACH) and the Massachusetts Institute of Technology (MIT). It was led by professional facilitators from the Consensus Building Institute (CBI).

The event was an informal, half-day brainstorming session dedicated to imagining (or *devising*) a new set of ideas for addressing the deep divisions in Chile today around hydroelectric projects. Much of the discussion focused on ways of increasing stakeholder and public participation in decisions about hydropower projects that affect local communities, lands, and water resources.

This document provides a summary of the meeting, including the ideas that were generated, and the challenges or obstacles the participants identified that must be overcome in order to achieve more meaningful and effective stakeholder engagement going forward.

In brief, the main outcomes of the conversation included recommendations to increase understanding between different parties' worldviews on "development," build relationships of trust among stakeholders, and pursue specific structural and institutional changes to facilitate and broaden stakeholder participation. These ideas are discussed in detail below.

## PREPARATION FOR THE SEMINAR

Partly because of its location in the water-rich Los Ríos Region of Chile, Universidad Austral de Chile has a unique interest in the issue of hydropower development. Scholars and students at UACH are involved in research and practice related directly or indirectly to hydropower development from a variety of angles, including indigenous rights, land use and environmental impact, law, and economics. A year prior to the Devising Seminar, UACH teamed up with experts in consensus building from MIT in order to explore opportunities to collaborate with the various groups interested in, or affected by, hydropower development in the Los Ríos Region. In 2012, UACH and MIT researched the issues, drafted three working papers, and hosted an event on the UACH campus in July that involved a range of stakeholders. The Devising Seminar built on these efforts.

In late 2012, the UACH/MIT team identified the broad range of stakeholder groups and organizations to invite to the Seminar. (See Appendix 1 – Invitation) The participant list was designed to capture a broad range of stakeholders, or interested groups, including hydro companies and associations, relevant government agencies, Mapuche and Pehuenche organizations and leaders, and civil society organizations, including environmental and community advocates.

In order to prepare the participants for the meeting, the UACH/MIT team drafted a discussion paper entitled "Conflict and Stakeholder Participation in Hydropower Development in Chile." (Appendix 2) This paper was designed to frame the conversation and loosely set the agenda for the meeting. It was sent to the participants along with a list of key terms (Appendix 3) in advance of the Devising Seminar.

## Participants and Organizers



Participants in the Seminar attended in a personal capacity. They came from the following organizations:

- Casa de la Paz (non-governmental organization)
- Chile 21, Programa de Derechos Indígenas (think tank)
- Colbún S.A. (power company)
- Consejo de Defensa de la Patagonia (non-governmental organization)
- Dirección General de Aguas, Ministerio de Obras Públicas (regional government)
- Generadoras de Chile (industry association)
- Observatorio Ciudadano (non-governmental organization)
- Servicio de Evaluación Ambiental (national government)

One of the unique characteristics of a Devising Seminar is that the attendees are invited to participate under the assurance of personal anonymity. Meeting notes and the ideas discussed are all made publicly available through this summary, yet no comments are attributed to individuals. Given that the key purpose of a Devising Seminar is to generate new ideas about how to tackle controversial topics, the promise of privacy allows the participants to engage freely in non-committal, big idea brainstorming. The media is not invited. Participants are encouraged to speak freely about the content of the meeting and to share the summary with their own constituencies and communities, while protecting the confidentiality of their fellow seminar participants.

The following individuals organized and facilitated the meeting:

*Universidad Austral de Chile:* Professor Teodoro Kausel, Patricio Belloy

*Massachusetts Institute of Technology:* Professor Lawrence Susskind, Carri Hulet, Francisco Humeres, Liliana Pimentel

*LLM from Harvard Law School:* Daniela Martínez

*The Consensus Building Institute:* David Plumb, Elizabeth Fierman

### **Key Ideas**

The primary objective of the Devising Seminar was to explore new ideas to address deep disputes today around hydropower development. To open this conversation, participants began by expressing their concerns about the way decisions about siting, building, and managing hydropower facilities have taken place in the past and/or are made today. These concerns, and the ideas generated to address them, generally related to three main themes: 1) Differences in *worldviews* or visions of development, 2) Issues related to *relationships* between various actors in the system, and 3) *Institutional* or structural weaknesses in the system.

### **Worldviews**

Some participants said that a fundamental issue that has contributed to hydropower conflicts in Chile is differing worldviews, values, and concepts of development. These differences were described as most apparent or prevalent with regard to indigenous versus non-indigenous groups.

As illustrations of differences between worldviews that can be problematic in the context of hydropower development, some participants from indigenous communities stated that Mapuche and Pehuenche find the concept of “owning” or “selling” land – which is intrinsic to the development of hydro projects - offensive. They also noted differences in senses of

timescales, contrasting the 50-60 year lifespan of a dam with thousands of years of indigenous cultural history in the territory where a dam is proposed or built.

With regard to differing concepts of development, some participants asked, “What is development and who benefits from each of the different concepts of development?” Participants did not attempt to define these different views, but it was implied that the dominant view of development in Chilean society is one of economic growth, higher living standards, etc. – a view that is not shared by all communities. One participant added that each “side” believes their concept of development is superior, which creates conflicts around values. Another participant said it is clear that there are many ways for a hydropower project to meet the dominant worldview of development and the interests of a hydropower company, but it is not clear how a project can meet the worldviews or needs of Mapuche communities.

Overall, some participants said that without some way to accommodate multiple worldviews and definitions of development, it will remain hard for indigenous communities to see hydropower development as an opportunity, rather than a threat.

Several ideas were generated to attempt to address the articulated clash of worldviews:

- Informal channels for conversations about values
  - o A recurring theme in the Seminar was the lack of listening and understanding among different stakeholder groups and segments of Chilean society. Almost all participants, regardless of the sector they came from, mentioned feeling “misunderstood” by other stakeholders. The proposal to create informal channels to talk about values was suggested as a way to create space for listening on all sides.
- Consultation about consultation
  - o The existing Chilean laws and policies about consultation of indigenous were widely framed as inadequate. In response to this general sense, one participant suggested that a consultation should be done to determine what legitimate consultation would look like for the people being consulted.
- Gather case examples
  - o Several representatives pointed out that Chile is not alone in dealing with the issue of competing worldviews in relation to development. Good and bad examples from Chile and other countries and projects dealing with the same issues should be gathered and studied.
- Develop parameters or criteria for what makes a “good” project
  - o Understanding should translate into concrete ways of evaluating how well a particular development proposal matches the various worldviews or values of the people who could be affected by it.
- Insert “civic participation” into the process of policy development
  - o One way to increase the chance that different worldviews will be taken into account in policy development is to require meaningful participation throughout decision making processes.

### *Relationships*

A second dominant, cross cutting theme that arose throughout the Seminar was the poor quality of relationships among many actors in Chile. Participants tended to emphasize the power of relationships to both help and harm. Often, the issue of trust was interwoven into comments

about relationships, again with emphasis on the potential for trust to facilitate progress – or for lack of trust to hinder it. Along these lines, many participants highlighted the general lack of trust in Chile’s institutions and legal frameworks.

Some participants drew connections between the quality of relationships and the relative power of stakeholders. One perspective was that relationships between powerful individuals in the government and the private sector are strong and “fluid,” transferring easily from one project or situation to another. By contrast, stakeholders with less power tend to have less fluid relationships with powerful decision-makers.

Some participants stated that communities and NGOs are prejudiced against companies (including the people who work in the companies), often assuming that they lack the capacity to understand or care about community values or anything beyond profit.

Good relationships, some said, are difficult to develop because the public rhetoric is always focused on past problems and breaches of trust, rather than potential ways to repair wrongs and rebuild relationships. Some participants pointed out that stakeholders generally do not meet except when forced to do so by conflict or crisis, and as a result there is no clear venue and too few opportunities for relationship building.

The following ideas were suggested to help build or repair relationships:

- Radical gestures to demonstrate trustworthiness
  - o One idea was that any actor could make a “radical gesture” of some kind to demonstrate to other stakeholders its willingness to “change the game” and collaborate. It was implied that hydropower companies would likely need to be the first to make this kind of move, but it was recognized that a radical gesture of this kind from any stakeholder could build trust and improve relationships.
- Need for catharsis
  - o Participants emphasized the importance of catharsis, or “clearing the air”, in order to begin to shift from focusing on past transgressions to focusing on constructive ways forward. A suggestion was made to open some space or design a process specifically to encourage the different groups to express their grievances.
- Increase the influence of other actors in decision making processes
  - o Some participants said that the best way to build trust would be to expand the degree of influence that impacted communities have on the decisions that affect them.
- Learn from examples
  - o A participant cited a personal experience with a previous project in which relationships were strengthened due to the company and the community’s early investment in a collaborative process. This and other examples could be explored as models.

#### *Institutional, structural, or systemic problems and opportunities*

Many of the ideas that emerged throughout the Seminar related to institutional or structural weaknesses in the systems that govern hydropower development. Many participants said that the current system supports imbalances in power and resources. Several participants cited



Chile's current water rights system as a key example, emphasizing that the unbalanced distribution of water rights has concentrated the majority of the rights in the hands of a few large companies. As another example, it was noted that dams and reservoirs are privately, rather than publicly, owned.

Some participants expressed concern that the requirement of Free, Prior and Informed Consent, as required under ILO Convention 169, might be interpreted as giving veto power over hydro projects to indigenous communities. They viewed this as unfair, since other non-indigenous communities would not have the same power.

Many participants highlighted a lack of institutional credibility as a key problem that worsens the potential for dialogue in Chile. Several people said that many Chileans don't trust public institutions to stand up for the interests of communities, in part due to a history of contentious decisions, but also in connection with systemic weaknesses mentioned earlier. For example, it was implied that the common perception that the water rights system in Chile is unfair often delegitimizes initiatives – like hydropower projects – that involve recognition of water ownership.

Finally, a participant wondered how to incorporate the results of useful informal processes like the Devising Seminar into a system that does not recognize or include this type of informal process.

Suggestions for structural and institutional improvements included:

- Improve the consultation process
  - o Create an independent monitoring entity. A participant noted that in other parts of the world, the consultation process with indigenous communities is monitored and evaluated by an independent third party that has been mutually appointed by the communities and the government.
  - o Participants called for legislation to define "consent" and to make the decision criteria more concrete.
  - o One participant suggested that a formal discussion take place to answer the question, "What would a consultation process look like that could be trusted?"
- Regulate benefit sharing
  - o Several participants called for norms or standards to determine distribution of benefits. One participant suggested that equity should not be left to the good will of the companies; rather, there should be laws that, for example, require hydro plants to dedicate a portion of the profits to the communities in which they operate. Another participant said the regulation should require companies and communities to decide together which projects should be pursued, and how *before* the projects get into the environmental review process.
- Social impact analysis
  - o While some social impact analysis is done as part of the environmental review, the suggestion was made to adopt a more rigorous social impact assessment as a requirement in the permitting process.
- Monitor existing projects
  - o Drawing on an example in the discussion paper that was distributed in advance of the seminar, a participant recommended that companies and communities could

design and implement joint monitoring efforts for existing projects. These efforts could be approached as experiments or pilots.

- Build communities' capacities to engage in decision making
  - o Again, citing examples in the discussion paper, several participants suggested that deliberate efforts be made by the government or project sponsors to invest resources in building local communities' capacity to engage in every aspect of the decision making process, from territorial planning to negotiating community benefits to monitoring agreements.
- Improve the civic participation opportunities in the environmental review process
  - o Specifically, some participants suggested lengthening the public review period in Chile's environmental impact assessment process (SEIA) beyond 30 days. More broadly, participants suggested inserting additional civic participation opportunities in the environmental impact assessment process, particularly earlier on in the review process and in more meaningful ways.

### **Additional ideas from the facilitators and conveners**

In addition to the ideas generated by the participants, representatives from UACH and MIT contributed a few ideas to catalyze conversation, spur new ideas, or offer resources:

- Dr. Susskind proposed running an informal collaborative process in parallel with the standard development and approval process for an actual project. This type of "shadow" process could serve as an experiment to demonstrate what a better consultation process might look like. Alternatively, he suggested choosing a project that has already been done or a decision that has already been made and imagining (collaboratively, and in detail) how it might have gone differently had the ideal consultation process been in place.
- Daniela Martínez suggested working together to craft the expectations for public and stakeholder participation with regard to the Carretera Eléctrica. She noted that this issue is on the agenda now, and provides a distinct opportunity to make a concrete proposal for improving citizen involvement in a process that is relevant to many other land use issues.
- Dr. Kausel informed the group that Universidad Austral de Chile is committed to creating a new space for collaboration. The University is doing this work to encourage consensus building and provide resources to any and all parties willing to pursue any of the ideas raised at the meeting, and/or other ideas that will lead to participatory decision-making.

### **Next Steps**

At the end of the meeting, the participants were asked two questions:

1. "Why might some of these actions be pursued?"; and
2. "Why might they not be pursued?"

With regard to the first question, one participant replied, "Because it has to," implying that other actions have not worked, so new attempts must be made. Another participant added that the context is changing in Chile in ways that make collaboration necessary. One participant said that the fact that Universidad Austral is pushing for better, more collaborative decision-making increases the likelihood that progress will be made. The participant added that investment by this type of institution is important for maintaining momentum.

In answer to the second question, a primary response was: "because it is hard to know where to start." It is the hope of the UACH/MIT/CBI team that this summary helps provide a starting point by reflecting back the ideas that this group of participants generated. Any individual or group

can take these ideas and attempt to put them into action – hopefully in collaboration with at least one other party. We encourage any person who comes in contact with this summary to believe that even small efforts can make a difference, and that many ideas can be pursued at multiple levels (e.g. local, regional, national; in the short-term or long-term; by looking back or looking forward).



## APPENDIX B – KEY TERMS

### TÉRMINOS CLAVE

#### **Devising Seminar**

Un encuentro que reúne a actores de alto rango que representan una amplia gama de puntos de vista sobre un desafío político concreto, que se reúnen para llevar a cabo una discusión informal y moderada acerca de posibles medidas que las mismas partes (u otras) puedan tomar. Un Devising Seminar es una reunión privada y sin prensa. El resultado suele ser un conjunto de propuestas elaboradas mediante la conversación colaborativa, las que no pueden atribuirse a ninguna persona. El Devising Seminar es un diálogo entre múltiples interesados que aprovecha el conocimiento y la autoridad de tomadores de decisión de alto nivel, combinándolos con el potencial de generación de nuevas ideas (creación de valor) de un ambiente informal.

#### **Compromiso Público o Participación del Público**

Esfuerzos que son intencionalmente diseñados para crear oportunidades, para que los ciudadanos interesados, grupos o líderes de la comunidad puedan participar en la toma de decisiones que afectan a la comunidad, o ayudar a poner en práctica dichas decisiones.

#### **Los Actores Involucrados**

Los individuos, organizaciones, agencias o grupos con un interés reconocido en una actividad o acción, y/o los recursos o sistemas sociológicos que podrían verse afectados por dicha acción (incluyendo a los animales, el territorio e incluso generaciones futuras).

#### **Comunidades Afectadas**

Los pueblos, barrios, o territorios culturales que podrían verse afectados por políticas del desarrollo, incluidos los proyectos de energía hidroeléctrica. Los efectos pueden ser directos, como las inundaciones o el desplazamiento, o indirectos, como cambios en su economía o la amenaza de vectores de enfermedades provenientes del agua.

#### **Evaluación de Impacto Ambiental**

Evaluación de Impacto Ambiental (EIA) es un método que busca anticiparse a los posibles impactos sobre los recursos naturales y humanos resultantes de los proyectos de desarrollo de todo tipo. En Chile, el Sistema de Evaluación de Impacto Ambiental (SEIA) se instauró en 1997 y fue modificado en 2010. Los proyectos con pequeños niveles de impacto deberán elaborar un documento llamado Declaración de Impacto Ambiental (DIA), mientras que los proyectos de mayor impacto requieren un Estudio de Impacto Ambiental (EIA). En ambos casos, el promotor del proyecto (desarrollador) debe cumplir una serie de requisitos. Comités gubernamentales realizan la revisión en intervalos de tiempo establecidos. Hacia el final del proceso de evaluación, los documentos deben estar disponibles para su revisión y comentario público. Los proponentes de proyectos están obligados a responder a los comentarios del público en una *adenda*, que un Comité Técnico podrá rechazar o aceptar. Si los impactos afectan a más de una región, serán necesarias revisiones adicionales. El paso final en un EIA se llama la Resolución de Calificación Ambiental (RCA).

#### **Evaluación de Impacto Social (EIS)**

El EIS "incluye los procesos de análisis, seguimiento y gestión de las consecuencias sociales previstas e imprevistas, tanto positivas como negativas, de las intervenciones planificadas (políticas, programas, planes, proyectos) y los procesos de cambio social invocados por esas intervenciones. Su objetivo principal es lograr un medio ambiente, biofísico y humano, más sostenible y equitativo". En Chile no existe un proceso exclusivamente dedicado a la EIS, más bien, "medio ambiente" se define en términos generales, de manera que algunos de los impactos sociales son evaluados a través del EIA o el análisis del DIA, incluyendo la consulta con las comunidades indígenas.

### **Moderador Neutral**

Un profesional capacitado o equipo con la responsabilidad de guiar a los actores involucrados a través de un proceso constructivo de generación de ideas o discusión sobre un tema controversial. Generalmente, un moderador neutral se solicita para ayudar a identificar posibles involucrados, redactar el plan de trabajo de una reunión, sugerir reglas básicas para una colaboración productiva, ayudar a los interesados a resolver sus diferencias, dirigir a las partes hacia nuevos recursos técnicos o de otro tipo, y registrar y sintetizar las ideas clave o propuestas que el grupo propone.

### **Joint Fact Finding**

Un proceso de colaboración que incluye múltiples pasos, dirigido a ayudar a las partes de la negociación a recopilar la información o los distintos análisis técnicos que necesitan para fundamentar la resolución de problemas. Las partes deciden de forma colectiva qué información debe ser recopilada, cómo va a ser analizada e interpretada, y en quién se puede confiar para proporcionar dichos datos o asistencia técnica.

### **Consentimiento Libre, Previo e Informado (OIT 169)**

El Convenio de la Organización Internacional del Trabajo 169 establece normas internacionales para el trato con los pueblos indígenas en todo el mundo. Cada país tiene la opción de adoptar el convenio 169 de la OIT, como lo hizo Chile en 2008 a través de una ratificación formal. La Convención establece principios que prohíben la discriminación contra los pueblos indígenas, establecen medidas especiales para salvaguardar sus intereses, reconocen las especificidades culturales exclusivas de un determinado grupo y requieren la consulta y participación plena de las comunidades indígenas en proyectos que potencialmente podrían afectarlos. El concepto de Consentimiento Libre, Previo e Informado (CLPI) implica que las consultas acerca de proyectos propuestos tienen lugar en igualdad de condiciones, a través de los canales o representantes apropiados, de buena fe y con el compromiso de llegar a un acuerdo en una atmósfera de respeto mutuo. La consulta asegura que los pueblos indígenas cuenten con una oportunidad real de influir en las decisiones que los afectan.

### **Acuerdos Contingentes**

Un Acuerdo Contingente es un acuerdo anticipado que define las consecuencias de la falta de cumplimiento de los términos de un acuerdo de cualquiera de las partes, o determina qué sucederá si un cambio de circunstancias afecta a la capacidad de las partes de cumplir con sus compromisos. Un Acuerdo Contingente establece claramente lo que sucede si una serie de eventos inesperados ocurren. Las consecuencias pueden incluir cualquier acción acordada por las partes, incluyendo la cancelación de actividades pre-determinadas. Añadir un elemento contingente en un acuerdo o contrato aumenta las posibilidades de que el contrato se respete, incluso en un contexto de alta incertidumbre.

**Acuerdo de Monitoreo**

Al igual que en los Acuerdos Contingentes, los Acuerdos de Monitoreo aumentan la probabilidad de que las promesas se mantendrán, mediante el establecimiento de mecanismos específicos mediante los cuales se da cumplimiento al acuerdo y se controlará en el tiempo. Por lo general, un Acuerdo de Monitoreo designa una parte independiente para hacer el papel de monitor. El monitor tiene la tarea de confirmar el cumplimiento y el intercambio de información de vigilancia actualizada con todas las partes, asegurando la transparencia.

**Equity Partnership**

Una Alianza Basada en la Equidad es un acuerdo vinculante entre aliados (no necesariamente en condiciones de igualdad) para compartir los beneficios de un proyecto. En términos del desarrollo de la energía hidroeléctrica, una Alianza Basada en la Equidad puede asegurar que una parte de los beneficios financieros de un proyecto vaya directamente (y de forma continua) hacia la comunidad afectada. Además, los aliados generalmente disfrutan de cierto grado de control sobre la forma en que se diseña y gestiona un proyecto.

**Responsabilidad Social Empresarial (RSE)**

La RSE es la idea de que las empresas son responsables de todos los impactos que puedan tener sobre el medio ambiente y el bienestar social. Las iniciativas de RSE buscan reducir o mitigar estos impactos a través de un programa de acción cuidadosamente planificado. En general, se entiende que la RSE es independiente de la regulación gubernamental, y puede ir más allá de lo requerido por la ley o las políticas.

**Corporate Social Engagement (CSE)**

El CSE busca involucrar a las partes interesadas, que puedan verse afectadas por las actividades de las empresas, en el diseño e implementación de iniciativas de una compañía en el ámbito de su RSE. En su forma más eficaz, el CSE busca construir verdaderas asociaciones entre las comunidades afectadas por los proyectos de una empresa, políticas o inversiones. El CSE genera oportunidades para "crear valor" u obtener más que lo que cualquiera podría obtener por su cuenta. Una idea central del CSE es que la participación de los interesados en el diseño e implementación de compromisos produce mejores resultados.



## APPENDIX C – DISCUSSION PAPER

# **Conflict and Stakeholder Participation in Hydropower Development in Chile**

Discussion Paper for the Seminar:

***Nuevas formas colaborativas de decisión sobre hidroelectricidad***

11 January, 2013    Santiago, Chile

## **Introduction**

The many conflicts over hydropower projects in Chile today are often described as a clash of irreconcilable interests - national energy security versus the rights of indigenous and local communities over their lands; centralized versus territorial planning; development versus environmental protection; tradition versus 'progress.' As each new conflict emerges, the sides of the battle are drawn, harden, and then winners or losers are declared.

These clashes are a destructive way for Chile (or any country) to work through the challenges and opportunities presented by hydropower. Communities are being torn apart as factions feel compelled to take sides in a dispute. When project opponents fail to stop a new hydropower plant, they also likely miss the opportunity to influence its design and implementation. Communities often lack the expertise to make informed technical decisions about their future, and resources to participate actively. Companies have faced costly delays and been forced to abandon investments. The conflicts may be contributing to a potential shortage in electricity supply on the country's main grid after 2015-2016 (CADE report, Ministry of Energy, 2011)<sup>10</sup>. The status quo is terrible for almost all actors.

This paper suggests a pathway forward to break free of the current battle lines. It focuses on the crucial role of consistent, meaningful engagement between government, companies, and impacted communities to determine whether a project should move forward, and if so, how to address the issues that matter most to the parties involved. The paper draws on international experiences and offers three case studies as examples of innovations in stakeholder engagement. The paper asks the question, how might the range of key actors – government, private sector, community activists, and NGOs – experiment with more collaborative models of interaction? This enhanced interaction may result in an overwhelming majority of impacted people deciding that the project is not feasible. It is also possible that, through a credible process, the range of actors will discover that their so-called irreconcilable positions are actually more compatible than they thought.

## **Hydropower decision making in Chile**

Chile's energy matrix is not dictated through a centralized planning process; rather, energy policies allow private power producers to make investment decisions based on expected

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<sup>10</sup> The assumptions about future demand that are used in this CADE report have been questioned by some environmentalists, who predict residential demand will rise less quickly.

trends in wholesale energy prices and a host of other considerations. A peculiarity of hydroelectric generation, as opposed to its alternatives, is that the feasibility of a project depends on the possession of water rights, which are highly concentrated among a few private actors. Thus, the set of potential projects that a company may consider is constrained by the ability to gain access to those rights.<sup>11</sup>

A typical hydropower project will go through the steps outlined in Figure 1.

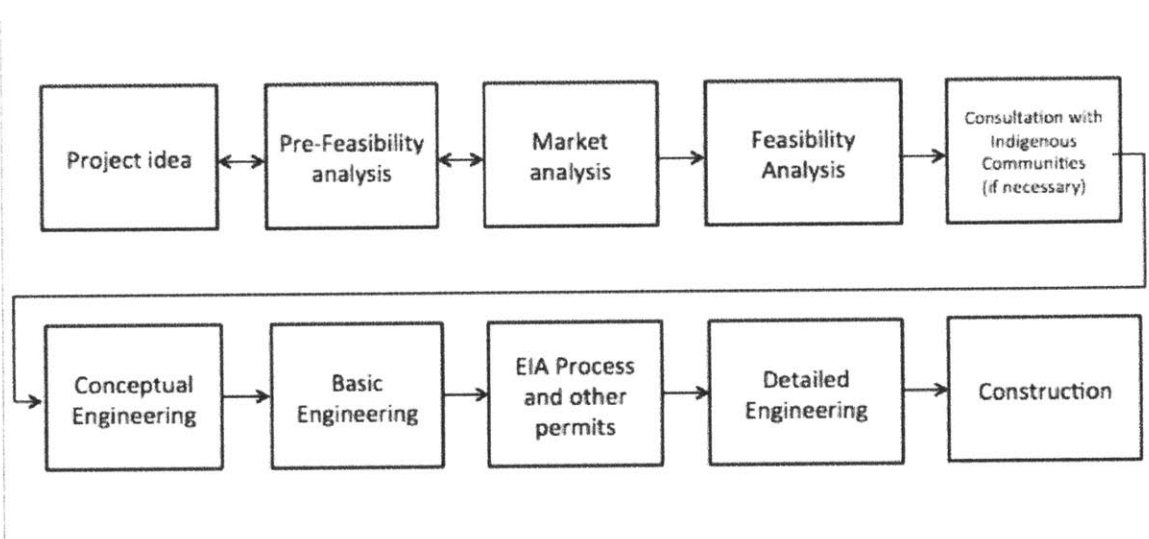


Figure 1 – Typical phases in the development of a hydropower project in Chile<sup>12</sup>

Throughout this process, the formally mandated moment for broad public participation occurs toward the end of the Environmental Impact Assessment (EIA), after the company has put together its designs, run its models, and prepared all of the required documents for the EIA. Apart from this, the only other requirement for public participation arises when a proposed project could impact indigenous peoples or lands. In that case, additional consultation with indigenous communities is required, per International Labour Organization Convention 169, which Chile ratified in 2008. ILO 169 requires development projects to include a consultation

<sup>11</sup> Prior to the enactment of Law 20017 on November 5, 2005, water rights could be held indefinitely without being used, at no cost. The 2005 law has gradually introduced “no use costs.” In some cases, rights are being relinquished so they may be made available to more efficient users. The law has also created a perverse incentive to implement hydroelectric projects quickly, without regard for the inherent quality of the project, or its potential environmental, social or economic impacts (Cristi and Poblete, 2011).

<sup>12</sup> Hydropower projects, unlike other power plant projects, have the option to apply for a concession that gives the owner of the project the right to impose easements in private lands and use public lands. It is common for hydroelectric projects to apply for this concession.



process to be made in good faith, with the aim of reaching consensus. Chile also endorsed the United Nations Declaration on the rights of Indigenous Peoples, according to which decisions affecting indigenous peoples, lands, and resources should also meet international standards for free, prior, and informed consent from affected communities. In Chile, the precise mechanisms for this consultation process relative to hydropower development are not clearly established. Also, the national policy on consultation with indigenous peoples – Decree 124 from Chile’s Ministry of Planning – is often critiqued for falling short of ILO 169 standards (Informe Alternativo 2010).<sup>13</sup>

Table 1 includes some notable hydropower projects in Chile that are currently in the process of environmental analysis.

<b>Project Name</b>	<b>Size</b>	<b>River</b>	<b>Type</b>
Trilaleo 2	2 MW	BioBío	run of the river
Túnel Melado	3 MW	Ancoa and Melao	run of the river
Los Hierros II	5 MW	Melado	run of the river
Pasada Baquedano	8 MW	Cholguán	run of the river
Butamalal	9 MW	Butamalal	run of the river
Pangui	9 MW	Pangui and Relicura	dam
Pulelfu	9 MW	Pulelfu	run of the river
Lican	17 MW	Río Bueno	run of the river
Los Lagos	53 MW	Pilmaiquen	dam
Rucatayo	60 MW	Pilmaiquen	dam
San Pedro	144 MW	San Pedro	dam
Maqueo	320 MW	Rupumeica and others	run of the river
Neltume	490 MW	Fui	run of the river
Hydroaysen	2300 MW	Baker and Pascua	dams

Table 1 – Some prominent hydropower projects currently in the process of environmental review (January 2013)

In practice, public participation and community involvement in hydropower projects often looks like the following hypothetical case:

<sup>13</sup> In August 2012, the Chilean government presented a draft of the process for consultation that would replace Decree 124 ([http://www.consultaindigena.cl/articulo080812\\_1.html](http://www.consultaindigena.cl/articulo080812_1.html)). Since then, the draft has been discussed with indigenous peoples through a consultation process. (<http://www.consultaindigena.cl/index.html>)

A company identifies a promising project location and secures the water rights (if it doesn't already own them). The company gets regulatory permission to begin feasibility studies, including onsite testing and studies. At this point, the company often holds its first community meetings – though regulations do not require it. The company also begins asking individual landowners for access rights. These initial meetings often go poorly, and sections of the community begin to organize against the project. Local politicians and indigenous leaders get involved. The company and these leaders begin conversations about monetary or other forms of compensation, outside of legal or regulated mechanisms. As opposition mounts, the company sponsors the creation of a new community organization to represent project allies. Lawsuits may begin at this point, and the conflict starts to attract national, and perhaps international attention. The company works with its community allies to build support for the project. An environmental impact assessment is conducted that shows how the company will mitigate all potential negative impacts. The report lacks credibility among project opponents, who urge the government to reject the impact assessment. The company may go back and forth with government regulators over details of the assessment before getting permission to begin construction. The government may issue permission, but with a significant number of caveats that raise further questions about the legitimacy and coherence of the assessment. The company also seeks sufficient community support to gain access to the project site. Some projects get built. Others don't.

### **Imagining a better process**

The stories behind real projects are typically a variation on this theme, but Chile is not alone in dealing with conflicting interests in hydropower development. Many countries have faced similar challenges around hydropower and other large-scale development initiatives. Lessons from different approaches to participatory engagement suggest four ideas that actors in Chile might consider.

1. More opportunities are needed for meaningful public participation and interaction, starting at the earliest stages of the project. Initial interaction should be about understanding interests and concerns, rather than “selling” the project. Companies should avoid the trap of trying to stitch together a coalition of allies.
2. The more a project involves a range of stakeholders directly in developing data, conducting studies and co-designing the project, the greater the credibility of the work. One technique, called “Joint Fact Finding,” involves communities, companies and governments working together to develop key reports and data that will inform decision-making. Community representatives often require technical assistance and funding to participate in efforts such as these.
3. Dialogue processes can work to address serious grievances if companies and civil society organizations commit to them sincerely, if communities feel they have advocates supporting them in the process and the capacity to negotiate in this way, and if the process addresses the issues that are most important to the parties.

4. Community and indigenous organizations can become formal partners in a project, with a stake in revenues and high level of influence in project decisions.

All of these ideas are intended to respect and understand better the key interests and needs of people who have a stake in a potential project. Through these processes community members should become better informed, and may overwhelmingly find that a project should not move forward. Conversely, they may discover alternatives for development that allow their core interests to be respected.

We have selected three cases that provide examples of how these ideas for smarter interaction have been applied in hydropower or other natural resource management projects. These projects are not without controversy, and their outcomes are not perfect. Yet they demonstrate different approaches that can significantly improve community and stakeholder participation in service to the community and project goals.

- 1) A large-scale hydropower project on the Madeira River in Brazil – Santo Antonio Dam – portions of which are now in operation, while others are still in construction. Potentially affected communities were consulted early in the environmental review process, resulting in the implementation of important mitigation measures and community benefits.

- 2) A hydropower project in Canada – Eastmain 1-A and Rupert Diversion Project – in which indigenous communities have become partners with the utility. Formal agreements resulted in reduced impacts and time to plan together. For the communities involved, the partnership has become a tool for sharing project benefits and guaranteeing that they flow back into the community.

- 3) A copper mine dispute in Peru – Mina Tintaya – provides an example of an informal process in which a private mining company and NGOs worked with community members using a round table process to resolve long-standing conflicts regarding land expropriation, alleged human rights abuses, and environmental concerns. The case also provides an illustration of how community capacity-building was integrated into public engagement.

#### Key lesson from Santo Antonio: Public Participation, Early and Often

In Brazil, one of the first steps in the environmental impact assessment process is “scoping” or drafting the Terms of Reference for the project. On the Santo Antonio Dam, these Terms were drafted with the input of local populations through 64 meetings in specific communities. These meetings were designed to disclose information about the project and learn about people’s expectations and concerns. The company also hosted four public meetings and 82 events with the same purpose for Brazilian and Bolivian government representatives and



some civil society institutions (da Costa, 2010). The information gathered at these meetings contributed to the formulation of mitigation measures stipulated in the project's Preliminary License, which gave the company approval to formulate the Basic Environmental Plan (PBA). In the PBA, 24 environmental programs were described in detail in four categories: monitoring, preservation and conservation, impact reduction, and compensation. The same institutions that were involved during the drafting of the Terms of Reference also participated in the drafting of the PBA. Working with local populations at an early stage of the project influenced the type of environmental and social programs the company committed itself to implement, and helped the dam advance through the licensing process without delays (da Costa, 2010).

Brazilian legislation encourages this type of public interaction at early stages. Public hearings may be held whenever the environmental agency sees fit or when called for by 50 or more individuals through the *Ministério Público* (da Costa, 2010). Public hearings usually take place before the environmental agency issues a Preliminary License, since concerns voiced by local residents usually lead to the inclusion of mitigation measures in the license. In addition, failure to include sufficient mitigation can result in the withdrawal of a license.

The Preliminary License for Santo Antonio dam was granted on the condition that the project developer address mitigation measures in greater detail, setting out, for example, public services that would be provided, mitigation measures for families whose economic activities would be affected, resettlement initiatives, an action plan for the control of malaria, ways in which the recommendations of the Program of Support for Indigenous Communities would be taken into account, and support for the revision of Porto Velho's urban plan to help cope with anticipated population growth (da Costa, 2010).

While most of these initiatives are required by law for any developer in the Amazon region, active participation helped shape the plans to reflect local needs and realities. To be sure, the enormous project, which involves 44 run-of-the-river turbines eventually churning out 3,150 MW of power, has several critics. Concerns remain about impacts on remote indigenous people, as well as the impacts on fish migration and forests. Yet many observers noted the project managed these types of concerns much more effectively than other Brazilian hydro projects.

#### Key lesson from Canada: Community Partnerships

Hydro-Québec has gone beyond having indigenous people review and comment on

environmental assessments. Instead, the company developed a formal partnership with communities affected by hydropower projects (Roux & Seelos). Since 1975, Hydro-Québec has signed approximately 30 agreements with indigenous communities regarding hydropower projects and community development<sup>14</sup>. In 2002, Hydro-Québec and representatives of the Cree Nation signed the Boumhounan Agreement, a joint accord on planning, studying, implementing and operating hydropower projects. Under the terms of this agreement, the Cree gave free, prior and informed consent to pursue the construction, operation and maintenance of both the Eastmain-1 and the Eastmain-1-A/Rupert project in a manner respectful of the Cree way of life and the environment. The Eastmain-1-A/Rupert project was also subject to a stringent impact assessment review in which the Cree were represented along with the provincial and federal governments (Roux & Seelos).

Under the 2002 agreement, the Cree will receive \$3.5 billion (Canadian dollars) over 50 years for community development. In addition, the Cree received “greater autonomy over the administration of Cree communities, as well as more meaningful participation in assessments of development projects...a new forestry regime, the joint management of parks and protected areas with Quebec, and shared revenues from hydro, mining, and forestry (Atkinson & Mulrennan 2009).”

Hydro-Québec has made it a corporate strategy to pursue partnerships with indigenous communities. For Hydro-Québec, these partnerships are a method of risk reduction, helping to ensure project acceptance and reducing the risks and costs associated with meeting project authorization requirements (Truchon).

These partnerships also hinge upon the readiness of indigenous communities to express their own interests by defining direct benefits and mitigation measures they consider acceptable. The utility assumes all the financing, construction and operating costs associated with the project. Design work and measures to minimize negative impacts (and to maximize positive outcomes) are carried out in partnership with affected localities (Roux & Seelos). Even before a formal agreement was signed, Hydro-Québec made an effort to ensure Cree participation in preparing the terms of reference for the required environmental and social impact studies. The Cree participated in all the main steps of the environmental study process, providing valuable local knowledge (Roux & Seelos).

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<sup>14</sup> Source: <http://hydroforthefuture.com/approche/32/harmonizing-projects-in-relation-to-their-host-communities>, Accessed June 29, 2012.

Though the regional Cree leadership signed the 2002 agreement, and a referendum resulted in an overwhelming majority of votes cast supporting the agreement, a vocal opposition has actively sought to halt the hydro project. This group of Cree leaders and activists assert that the development will cause long-term ecological degradation and a threat to indigenous heritage (Atkinson & Mulrennan 2009.) They argue that the regional Cree leadership was not transparent in how it negotiated the 2002 agreement. Their efforts to stop the Eastmain-1 and the Eastmain-1-A/Rupert project have not been successful to date.

#### Key lesson from Peru: Making dialogue work

In the Peruvian highlands, community anger over land expropriation, environmental damage and alleged human rights abuses simmered for years at the Tintaya Copper Mine. By the time Australian-based BHP acquired the mine in the late 1990s, anger boiled over into protests and civil strife. With the intervention of national and international NGOs, the company entered into a dialogue roundtable process in late 2000 to address concerns.

The roundtable's first task was to name the core issues of concern that participants would tackle. Participants formed work groups around priority issues, such as land compensation, reducing and cleaning up pollution, and respecting human rights. These were challenging issues that required years of patient work by all sides to address. After several years of work, the roundtable succeeded in finding solutions to these core issues, creating the conditions for the company and communities to create strong working relationships. The roundtable is still in use today as a mechanism for communication and collaboration between the company and surrounding communities, focusing on sustainable development projects.

In a recent documentary about the roundtable, participants reflected on what worked best in the process (CSRI 2011). First, community representatives said they were willing to enter into the process despite significant mistrust because local and international NGOs accompanied them. Second, all participants agreed to bring in an impartial facilitator – selected jointly by all participants - to guide the process.

Third, the round table needed to address the issues that were most important to community members and the company – in this case, the perceived unfairness of land expropriation, alleged human rights abuses and environmental degradation. Only after addressing those issues could participants move on to opportunities such as development initiatives.



Finally, the dialogue process benefited from negotiation training that built the capacity of community representatives to engage productively in this type of negotiation. Prior to the training, company representatives themselves noted that the negotiation “wasn’t balanced” (CSRI 2011). The company agreed to fund the negotiation training by local NGOs a few months into the round table process.

In 2012, the mine faced protests and conflict with a ring of stakeholders just beyond the rural communities that surround the mine. The company is now attempting to apply the lessons of the successful roundtable with the mine’s neighbors to the broader set of stakeholders.

### **Conclusion and Recommendations**

The primary drivers for greater civil society participation in these three examples were the communities’ willingness and capacity to negotiate directly with the companies, as well as the developers’ desires to reduce risks and improve projects by addressing community concerns through collaborative decisionmaking. In Brazil and Canada, helpful government regulations and support also played an important role.

These examples show that companies can creatively pursue opportunities for co-creation in early stages of project development while commitment to a particular project design is relatively low. These measures also increase the likelihood that companies place greater importance on obtaining a “social license” from communities during initial phases of a project. A bold company in Chile might seek to replicate formal partnership agreements similar to those between HydroQuébec and the Cree people in Canada. Companies may also look for ideas and models in the core principles of effective corporate stakeholder engagement, including training for their own employees, and capacity building for members of the communities in which they work (Hoben & Plumb 2012).

The people whose everyday lives and culture might be most affected by hydro projects would benefit from increased capacity to contribute to project analysis, design, and implementation. In Canada and the U.S., the federal government provides grants to community organizations to hire technical expertise, so they can participate more effectively in project analysis. In the Mina Tintaya case in Peru, negotiations were halted when it was clear that the company and the community were not communicating effectively. The process overcame the hurdle with targeted training. In Quebec, Cree representatives have gained the necessary technical abilities to co-produce project designs and associated mitigation measures. In Chile,

potentially impacted communities might seek government-sponsored training in environmental assessment procedures or NGO-led education on creative mechanisms for promoting compliance with ILO 169. These efforts would help the communities themselves become the experts on the processes that are designed for their protection and benefit, and be better informed to reject projects that aren't compatible with their underlying interests and needs.

While companies and communities can do much to improve project outcomes, it is clear that policy reforms in Chile will be necessary to compel systemic change. As discussed in the case examples, project proponents in Brazil have an incentive to hold participatory meetings early in the process because Brazilian law invites government and civil society groups to call for public hearings at any time. In Canada, civil society participation is required in the environmental assessment very early on, including reviewing and commenting on screening reports before a feasibility decision is ever made.<sup>15</sup> Reforms to the EIA process, to the use and distribution of water rights, and to land use and conservation frameworks in Chile should all be undertaken with an eye toward improving civil society participation.

While improvements in formal public participation requirements and accountability mechanisms in Chile will lead to better decision making, informal efforts to address historical grievances, generate good ideas, and build trust are one way to proceed immediately. In the Mina Tintaya case, community members first wanted the mining company and the government to listen. Several years of discussions between the company, international NGOs, and community members eventually made it possible for other collaboration to take place. Developing trust between actors is critical. This requires continuous communication, and a willingness on all sides to seek new ways of working together.

*Contributing authors: Melissa Higbee, Carri Hulet, Jenna Kay, David Plumb, Claudio Vergara*

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<sup>15</sup> Source: <http://www.ceaa-acee.gc.ca/default.asp?lang=En>, Accessed June 29, 2012.

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## APPENDIX D – SURVEYS

Email invitation to participate in the Before Survey (*sent by email January 8, 2013*)

Estimado/a participante,

Como complemento a la invitación que se le ha enviado para asistir al seminario “**Nuevas formas colaborativas de decisión sobre hidroelectricidad**,” que se realizará el viernes 11 de enero de 2013 en ICARE, le adjuntamos un documento de discusión sobre los temas que serán tratados.

Adicionalmente, le invitamos a participar en una breve encuesta anónima de sólo seis preguntas en relación al seminario, la que es parte de una investigación que lleva a cabo una alumna de postgrado del MIT. Su participación es voluntaria y le tomará menos de 5 minutos.

Se ruega responder esta encuesta **antes de asistir al seminario**, utilizando el siguiente enlace:

<http://www.surveymonkey.com/s/XHG7L5Z>

Agradecemos desde ya su participación.

Saludos cordiales,

Dr. Lawrence Susskind, Ford Professor of Urban and Environmental Planning, MIT

Dr. Teodoro Kausel, Profesor Instituto de Economía, UACH

Carri Hulet, candidata, Master of City Planning 2013, MIT

**Before Survey** (Answers received online and in person at the Devising Seminar)

Esta breve encuesta nos ayuda a comprender sus perspectivas sobre los temas a discutir en el seminario. La encuesta es anónima, y su participación es voluntaria.

1. ¿Cuál de estas declaraciones aplica de forma más directa a usted en la actualidad?

- ☐ Soy funcionario del gobierno
- ☐ Soy un líder de una comunidad local
- ☐ Soy un académico, trabajando en una institución académica
- ☐ Trabajo para una compañía hidroeléctrica o una asociación relacionada con asuntos hidroeléctricos
- ☐ Trabajo para una organización no gubernamental (ONG) o grupo de defensa
- ☐ Otro \_\_\_\_\_

2. Por favor, marque al lado de cada grupo con que usted ha trabajado directamente en el último año en un asunto o proyecto hidroeléctrico (incluya a su propio grupo u organización)

- ☐ gobierno
- ☐ comunidad local
- ☐ institución académica
- ☐ empresa hidroeléctrica
- ☐ organización no gubernamental (ONG) o grupo de defensa
- ☐ ninguno de los anteriores

3. ¿Ha formado usted parte, en los últimos dos años, en alguna actividad que busque reunir a un grupo de personas con diferentes perspectivas para discutir sobre el desarrollo de la hidroelectricidad en Chile? ☐ Sí ☐ No ☐ No estoy seguro(a)

4. ¿Piensa usted que la sociedad civil debe estar más involucrada en la toma de decisiones sobre el desarrollo de la hidroelectricidad en Chile? ☐ Sí ☐ No ☐ No estoy seguro(a)

5. ¿Qué obstáculos para mejorar la colaboración existen entre stakeholders (interesados) en conflictos sobre hidroelectricidad en Chile?

6. ¿Qué oportunidades existen para colaborar entre stakeholders (interesados) en conflictos sobre hidroelectricidad en Chile?

**After Survey A** (handed out in person at the Devising Seminar – no written invitation)

Su participación en esta encuesta es voluntaria y sus respuestas son anónimas.

1. ¿Cuál de estas declaraciones aplica de forma más directa a usted en la actualidad?  
☐ Soy funcionario del gobierno  
☐ Soy un líder de una comunidad local  
☐ Soy un académico, trabajando en una institución académica  
☐ Trabajo para una compañía hidroeléctrica o una asociación relacionada con asuntos hidroeléctricos  
☐ Trabajo para una organización no gubernamental (ONG) o grupo de defensa  
☐ Otro \_\_\_\_\_
2. ¿Fue útil para usted la reunión de hoy?  
☐ Sí (explique, por favor) ☐ No (explique, por favor) ☐ No sé (explique, por favor)
3. ¿Tiene planes para continuar en conversaciones sobre lo discutido el día de hoy con algún otro participante de esta reunión?  
☐ Sí (explique, por favor) ☐ No (explique, por favor) ☐ No sé (explique, por favor)
4. ¿Qué grupo o representante debería haber concurrido a esta reunión? ¿Por qué piensa que esta persona o grupo debería haber participado?
5. ¿Qué ha aprendido hoy y que marcará una diferencia en su forma de pensar sobre el desarrollo de la energía hidroeléctrica?
6. ¿Pensando en las ideas generadas por los participantes en la reunión de hoy, ¿cuál fue la idea o sugerencia que más le intrigó? ¿Por qué?
7. ¿Cambiará algo en el status quo tras la reunión de hoy?  
☐ Nada  
☐ Algo específico (explique, por favor)  
☐ No estoy seguro(a), pero creo que algunos cambios ocurrirán a partir de esta reunión.
8. ¿Cuáles son sus sugerencias para perfeccionar reuniones como esta en el futuro?

Email invitation to participate in After Survey B (*sent April 8, 2013*)

Estimados/as Participantes,

Gracias por el tiempo que se dieron para revisar el resumen del Devising Seminar la semana pasada. El resumen ya está disponible al público aquí. Les recuerdo que las identidades de los participantes deben mantenerse anónimas.

Como favor final, les pido que respondan a una muy breve encuesta (sólo 6 preguntas). Les tomará menos de cinco minutos. Les agradezco mucho su participación.

Enlace a la encuesta: <http://www.surveymonkey.com/s/6LPCCDJ>

Saludos cordiales,

Carri Hulet, candidata, Master of City Planning 2013, MIT



## After Survey B

1. ¿Cuál de los siguientes roles describen en forma más precisa la calidad en la que usted asistió al Devising Seminar el 11 de enero, 2013?

- ☐ Era funcionario de gobierno
- ☐ Era un líder de una comunidad local
- ☐ Era un académico, trabajando en una institución académica
- ☐ Trabajaba para una compañía hidroeléctrica o una asociación relacionada con asuntos hidroeléctricos
- ☐ Trabajaba para una organización no gubernamental (ONG) o grupo de defensa
- ☐ Otro

2. Con posterioridad al Devising Seminar, ¿ha tenido alguna interacción con otro/a participante del Devising Seminar para discutir sobre los temas que conversamos en la reunión del 11 de enero?

- ☐ Sí
  - ☐ No
- (explique, por favor)

3. Comparando su forma de pensar sobre el desarrollo de la energía hidroeléctrica en Chile antes del Devising Seminar con su forma de pensar ahora, ¿existe alguna diferencia?

- ☐ Sí
  - ☐ No
- (explique, por favor)

4. Pensando en las ideas generadas por los participantes en el Devising Seminar, ¿cuál fue la idea o sugerencia que más le llamó la atención? ¿Por qué?

5. El resumen del Devising Seminar que le enviamos a fines de marzo ya está disponible al público. Los participantes también pueden distribuirlo si así lo desean. ¿Cree usted que utilizará el resumen, o alguna parte de éste, en su trabajo?

- ☐ Sí
  - ☐ No
- (explique, por favor)

6. Si la Universidad Austral de Chile organiza una reunión similar a la que usted asistió, ¿estaría interesado en participar nuevamente?

- ☐ Absolutamente
  - ☐ Probablemente
  - ☐ No lo sé
  - ☐ Probablemente no
  - ☐ Absolutamente no
- (explique, por favor)